MINUTES OF THE SEPTEMBER 6TH, 2022
CHINCOTEAGUE TOWN COUNCIL MEETING
Council Chambers

Council Members Present:
J. Arthur Leonard, Mayor
Christopher D. Bott, Vice Mayor
Denise P. Bowden, Councilwoman
William T. McComb, Jr., Councilman
Ellen W. Richardson, Councilwoman
K. Jay Savage, Councilman
Gene W. Taylor, Councilman

Council Members Absent:

Staff Present:
Mr. Michael T. Tolbert, Town Manager
Mr. Tyler Greenley, Major
Mr. E. Bryan Rush, Director of Emergency Services

Call to Order
Mayor Leonard called the meeting to order at 7:00 p.m.

Invocation
Councilman Taylor offered the invocation.

Pledge of Allegiance
Mayor Leonard led in the Pledge of Allegiance.

Public Comment
There was none.

Agenda Adoption
Councilman McComb motioned, seconded by Councilwoman Bowden to adopt the agenda as presented. Unanimously approved.

Staff Reports
General Government
Town Manager Tolbert reported on the meeting from Friday, August 19th with the Army Corps of Engineers regarding the Inlet Study. The purpose of the meeting was to start strategizing on how to get the Inlet Study advanced in priority when they submit it into their budget for FY24. The study is a $3 million study with a 50% match which has been approved in the state budget last year.

Town Manager Tolbert also advised they discussed well relocation at the quarterly meeting with the Wallops Flight Facility. They were informed that the well relocation was dropped from the current funding this year. He has had contact with representatives with Congresswoman Luria's office and staff members from Senator Warner's office who are trying to get it included this year. They advised it was a stretch to have it happen this year but were confident it would happen next year. He advised the Town was interested in extending the time frame from 5 years to 10 years and making the language to include desalination as well. He updated Council on the ARPA funds. The total ARPA funds are $2,982,869. Council has approved 3 projects: 1) CVFC SCBA

compressor purchase totaling $53,750. 2) CVFC new ambulance grant match in the amount of $90,000. 3) Cropper Street water line replacement which will cost $128,000. This totals $272,750 in expenditures leaving a balance of $2,710,110. He added that the ARPA Committee, which was formed by Council to review and recommended projects for funding by ARPA funds had discussed at length using the remaining funds for acquisition of a limited capacity sewage plant and design and construction of a collection and conveyance system for that plant. This is an extremely expensive undertaking that would quickly spend the remaining funds. He advised that all ARPA funds must be obligated by December 2024, with a period of performance lasting until December 31, 2026.

Town Manager Tolbert reported that the rental spaces in the old firehouse was profitable in FY22. As of June 30, 2022, the Town has received $32,085 in rental income and provided a total of $20,302 in operations and maintenance costs over the same period. He anticipates some maintenance and upgrades in the building in the coming years. He reviewed the financial report. He also advised of the Meals and Transient Occupancy Tax revenues. He gave an update on the Building and Zoning report. He also reported that Public Works installed waterlines in Inlet View. There is demolition going on at Captain Bob's. The pavilion at Brianna's Park is almost complete and they are currently working on the restrooms. They have also been doing routine street sweeping, and the cemeteries were all cut in August. Town Manager Tolbert reported that they received the approved shop drawings for the VPA Grant. They are on the production schedule and waiting for a date the new materials will be shipped. He advised that one of the mosquito sprayers is down and there isn't an available replacement. They conducted 2 aerial mosquito spraying last month. They are installing a new boiler for the municipal building in-house later this week. The Memorial Park boat ramp is closed. The Army Corps of Engineers did a site visit and the engineers have been instructed to finalize the construction documents. Once the permit and documents are in-hand they will put it out for bids.

Councilwoman Bowden asked if they were going to try to pave Ocean Breeze in this cycle.

Town Manager Tolbert stated that VDOT advised they will give single lanes in Ocean Breeze, which is about 16'. The plan was not to do all the roads there at one time, but to do a little at a time. If VDOT approves the single-lane width, the plan is to do a road in there this year.

Vice Mayor Bott referenced the Captain Bob's property and asked Town Manager Tolbert if he made any headway conversing with the contractors about sidewalks, bulkheads, and such.

Town Manager Tolbert stated they made suggestions as to what they would like to see and were receptive to the requests. He advised he will touch base with them again to make sure they understand it's something they are serious about.

Councilwoman Richardson commented on the depth of the new water service for Inlet View.

Councilman Savage asked if there are any reports on the A/C unit at the Center.

Town Manager Tolbert reported that a serviceman was onsite today about the chiller. He was hoping to get the chiller through to November as they have a new chiller on order. The new equipment will be here in the winter. The serviceman advised that circuit #2 was completely

depleted of freon. A leak was found, they pressurized the system, and drew a vacuum on it. When they come back tomorrow, if the vacuum holds, they will recharge the system. He hopes it will last to the end of the season.

Police Department

Major Greenley reported that on August 8th, Sgt. Adams completed a leadership institute at Christopher Newport University. He advised that on August 9th, the Church by the Beach reached out to the Police Department requesting active shooter training. He contacted DCJS who put on a webinar of Civilian Response and Casualty Care training. He stated they want to do this more often and include the other churches. He continued that also on August 8th, Pfc. Carmody completed the SRO training in Chesapeake and was back in the school this morning. On August 17th, Sgt. Adams attended a grant distribution workshop in Norfolk for the DMV Grant. He attended a Training Coordinators' meeting on August 23rd at the Criminal Justice Training Academy. Major Greenley also reminded everyone they are preparing for the Annual Poker Run this Saturday.

Councilwoman Bowden asked when the Poker Run starts.

Major Greenley advised the bikes leave at 9:00 a.m. from Harley Davidson in Salisbury. The last bike in is at 2:00 p.m., the auction starts at 3:00 p.m., and the band starts at 5:00 p.m.

Councilman McComb asked about this year's route.

Major Greenley advised that is starts in Salisbury at the Harley Davidson traveling down to Oak 110 in Snow Hill, Bucks Bar and Grill in the Pocomoke Forest, then back to Don's Seafood on Chincoteague.

Councilwoman Bowden asked if there were many registered.

Major Greenley reported that they had 33 pre-registered.

Councilwoman Richardson asked if they were going to close Main Street off.

Major Greenley advised they were.

Emergency Services

Director of Emergency Services Rush advised that in August they had 100 calls, which is 19 less than last year. He attended the EMS Advisory meeting on August 4th and 5th. He stated that the big topic was getting EMS as an essential service codify. They're working on language and bills but have to find a patron for the bill once it's ready. He explained that this was brought up because there were a lot of monies due to COVID that the EMS missed out on because nowhere in the Code lists EMS as an essential service. COVID proved that EMS is an essential service. Another topic was approving a new scope for the EMT advanced provider at the recommendation of the Operational Medical Director Committee. This helps rural areas as not all rural areas can have a staff of paramedics like the Town does. They also decided to draft a letter to send to the National Registry of Emergency Medical Technicians opposing their accreditation resolution that they put forth. It would turn the Emergency Medical Service training accreditation backwards.

Virginia is very robust in their training and accreditation programs. On August 17th, they voted to rescind that resolution. Director of Emergency Services Rush advised he had the opportunity to meet the state Health Commissioner, Dr. Cullen Green who was in the Army and is a rural doctor and understands the problems in rural Virginia. The Legislative and Planning Committee will meet off-cycle on September 23rd to work on the EMS Essential Bill and the state EMS Plan. They will meet again on November 17th and 18th.

Director of Emergency Services Rush reported on Emergency Management. They are still talking about COVID, weather monitoring and focusing on the tropics. They are also finishing the After-Action Reports. He reviewed the current tropical activity. He reported on the history of local storms. He reminded everyone that now is the time to prepare. The 7-day positivity rate for COVID is 17.6% which has fallen from last month and a little higher compared to last year.

Committee Reports:

Ordinance Committee

Councilman Savage reported that the Ordinance Committee met on August 11th. They considered a modification to the Burning Ordinance. They made recommended changes which were incorporated to be presented to the Committee in September. They also discussed the Cigarette Tax Ordinance. The Committee recommended to join the Chesapeake Bay Region Cigarette Tax Board and recommended a tax rate of $0.40 per pack which was voted on at the Council workshop meeting on August 18th to go to public hearing. They also discussed a modification to the Meals Tax Ordinance and the Committee agreed to forward the Town Manager's recommended revisions to Council. The Committee also reviewed the Noise Ordinance, and the Committee reserved the review of the ordinance.

Adoption of the Minutes of the August 1st and August 18th Council Meetings

Councilman McComb motioned, seconded by Councilwoman Bowden to adopt the minutes of the August 1st and August 18th Council meetings as presented. Unanimously approved.

Consider Property Line Vacation

Mayor Leonard advised they have a request for a lot line vacation for Mrs. Bonnie Jones on Ocean Blvd.

Councilwoman Bowden asked if this would make it one big log.

Mrs. Jones advised it would. She added that presently she is limited by the line

Councilwoman Bowden motioned, seconded by Councilman McComb to approve the property line vacation between lot 16 and lot 17 on Ocean Boulevard to create 1 parcel of land as requested. Unanimously approved.

Public Hearing on Adoption of the Town of Chincoteague Cigarette Tax Ordinance

Mayor Leonard opened the public hearing for the Cigarette Tax Ordinance. There were no comments.

Town Manager Tolbert reviewed the Ordinance. He advised that the Ordinance Committee met and considered a tax on all cigarettes sold on the Island District. There was recent action

legislation which allows a locality to now tax cigarettes. The County is taxing its citizens a cigarette tax including the incorporated towns unless the incorporated towns impose the tax itself. The Ordinance Committee is recommending to Council $0.40 per pack sold within the Town of Chincoteague and to go into effect January 1, 2023. In order to facilitate collections of the tax, it was recommended that the Town join the Chesapeake Bay Region Cigarette Tax Board. Their duty is to impose the tax for the Town, to collect the tax, and enforce it with an administrative fee of 5% of the tax. He feels this is very effective for the Town. He has not received an estimated total of the volume of cigarette packs sold on the Island. He also stated that if the Town joins the Tax Board there will be 11 members and of the current 10 members, 9 of them collect the maximum of $0.40 per pack. The exception is the County of Accomack who is collecting $0.10 per pack. The Ordinance Committee recommended $0.40 per pack.

Councilwoman Bowden motioned, seconded by Vice Mayor Bott to add Article VII entitled the Town of Chincoteague Cigarette Tax Ordinance as presented to adopt the draft Ordinance approving the Town of Chincoteague membership in the Chesapeake Bay Region Cigarette Tax Board also as presented. Unanimously approved.

AN ORDINANCE AMENDING CHAPTER 54 OF THE TOWN OF CHINCOTEAGUE CODE, ADDING ARTICLE VII THERETO, IMPOSING A "CIGARETTE TAX"

WHEREAS, Virginia Code §58.1-3830 authorizes localities to levy taxes upon the sale or use of cigarettes ("cigarette tax"); and

WHEREAS, a public hearing on the proposed cigarette tax was held by the Town of Chincoteague Town Council ("Town Council") on September 6, 2022, said public hearing having been duly advertised as required by law; and

WHEREAS, upon consideration of the proposed cigarette tax, the Town Council finds that the imposition of such tax would serve the interests of the citizens of the Town of Chincoteague by increasing public revenues for the enhancement of public services; and

WHEREAS, the Town Council further finds that joining the Chesapeake Bay Region Cigarette Tax Board ("CBRCTB") will assist the Town of Chincoteague in the efficient administration and enforcement of the cigarette tax.

NOW THEREFORE, BE IT HEREBY ORDAINED by the Town Council that the Town of Chincoteague herby imposes a tax on the sale or use of cigarettes in the Town of Chincoteague as hereby set forth and under the terms and conditions herein, and that Chapter 54 of the Town of Chincoteague Code be, and it is hereby amended by adding Article VII, as follows:

Sec. 54-351. Short Title.

This article shall be known and cited as the Town of Chincoteague Cigarette Tax Ordinance.

Sec. 54-352. Definitions.

For the purposes of this article, the following words and phrases have the meanings respectively ascribed to them by this section, except in those instances where the context clearly indicates a different meaning:

"Administrator" means the individual employed by the CBRCTB to administer and enforce this ordinance, or his designated agents or appointees, including without limitation its Tobacco Revenue Agents.

"Board" or "CBRCTB" means the Chesapeake Bay Region Cigarette Tax Board.

"Carton" means any container, regardless of material used in its construction, in which packages of cigarettes are placed.

“Cigarette” means and includes any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

“Cigarette Machine Operator” means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.

“Dealer” means and includes every manufacturer's representative, wholesaler, retailer, cigarette machine operator, public warehouseman, or other person who shall sell, receive, store, possess, distribute, or transport cigarettes within or into the Town.

“Package” means and includes any container, regardless of the material used in its construction, in which separate cigarettes are placed without such cigarettes being placed into any container within the package. “Packages” are those containers of cigarettes from which they are consumed by their ultimate user. Ordinarily, a package contains twenty cigarettes; however, "package" includes those containers in which fewer or more than twenty cigarettes are placed.

“Person” means and includes any individual, firm, unincorporated association, company, corporation, joint stock company, limited liability company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership, and conservator. The word "person" as applied to a partnership, unincorporated association, or other joint venture means the partners or members thereof, and as applied to a corporation or company, includes all the officers and directors thereof. The word “person” as applied to a limited liability company shall include all members and managers thereof.

“Place of business” means and includes any place where cigarettes are sold, placed, stored, offered for sale, or displayed for sale, or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the Town.

“Registered agent” means and includes every dealer in the Town who is issued a permit by the CBRCTB pursuant to section 54-535 below.

“Retail dealer” means and includes every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the Town to the ultimate consumer; or any person who, in the usual course of business, owns, leases or otherwise operates within his own place of business, one or more cigarette vending machines for the purpose of sale of cigarettes to the ultimate consumer within the Town; or any person who, in any manner, buys, sells, stores, transfers, or deals in cigarettes for the purpose of sale within the Town to the ultimate consumer, who is not licensed as a wholesaler or vending machine operator.

"Sale" or "sell" means and includes every act or transaction, regardless of the method or means employed, including barter, exchange or the use of vending machines or other mechanical devices or a criminal or tortious act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the Town from a dealer as herein defined to any other person for a consideration.

"Stamp" means a small, gummed piece of paper or decal used to evidence provision for payment of the tax as authorized by the Chesapeake Bay Region Cigarette Tax Board, required to be affixed to every package of cigarettes sold, distributed, or used within the Town.

"Store" or "storage" means and includes the keeping or retention of cigarettes in this Town for any purpose except sale in the regular course of business.

"Tobacco Revenue Agent" means a person authorized by CBRCTB to act on its behalf in enforcement of this ordinance.

"Town" means Town of Chincoteague, Virginia.

"Use" means and includes the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

" User" means any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

"Wholesale Dealer" means any individual, partnership, limited liability company, or corporation engaged in the sale of packages of cigarettes for resale into or within the Town.

Sec. 54-353. Levy and rate.

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the Town upon every person who sells or uses cigarettes within the Town an excise tax at a rate of $0.40 for each package containing twenty cigarettes and $0.02 for each cigarette contained in packages of fewer or more than twenty cigarettes sold or used within the Town. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the Town shall be paid but once.

Sec. 54-534. Administration and collection.

(a) The tax imposed by this article shall be evidenced by the use of a tax stamp and shall be paid by each dealer or other person liable for the tax under a reporting method

determined by the CBRCTB. Except as provided in Virginia Code Section 58.1-3830(D), the tax stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect, pay the tax, and report on a monthly basis all packages of cigarettes on forms prescribed for this purpose by the CBRCTB, including the following:

(1) The quantity of CBRCTB-stamped cigarettes sold or delivered to: (i) each registered agent appointed by the CBRCTB for which no tax was collected; (ii) each manufacturer's representative; and iii) each separate person and place of business during the preceding calendar or fiscal month; and

(2) The quantity of CBRCTB stamps on hand, both affixed and unaffixed on the first and the last day of the preceding calendar month and the quantity of CBRCTB stamps or CBRCTB-stamped cigarettes received during the preceding calendar month; and

(3) The quantity of cigarettes on hand to which the CBRCTB stamp had not been affixed on the first and last day of the preceding calendar or fiscal month and the quantity of cigarettes received during the preceding calendar or fiscal month to which the CBRCTB stamp had not been affixed; and

(4) Such further information as the administrator for the CBRCTB may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or user.

(b) Each dealer or other person liable for the tax shall file such reports with the CBRCTB and pay to the CBRCTB the tax due prior to the monthly due date to be established by the Board and shall furnish copies of all cigarette tax reports submitted to the Virginia Department of Taxation.

(c) All money collected as cigarette taxes under this ordinance shall be deemed to be held in trust by the person collecting the same until remitted to the CBRCTB.

(d) When, upon examination and audit of any invoices, records, books, cancelled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the CBRCTB of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by such person, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by such person without the proper tax having been paid. The CBRCTB shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due, impose a penalty of ten per cent (10%) of the gross tax due and may impose interest of three-quarters per cent (3/4 of 1%) per month of the gross tax due.

(e) When any dealer or other person liable for the tax files a false or fraudulent report or fails to perform any act or performs any act to evade payment of the tax, the CBRCTB shall administratively assess the tax due and impose a penalty not to exceed fifty per cent (50%) of

the gross tax due and interest of three-quarters per cent (3/4 of 1%) per month of the gross tax due.

(f) The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the CBRCTB stamp has been affixed thereto prior to offering them for sale.

(g) Any dealer or other person liable for the tax who shall receive cigarettes not bearing the CBRCTB stamp shall, upon receipt of such cigarettes, commence and with all reasonable diligence continue, to affix the CBRCTB stamp to each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering such cigarettes for sale.

(h) Any dealer or other person liable for the tax who has notified the CBRCTB that he is engaged in interstate or intrastate business shall be permitted to set aside such part of his stock as may be legally kept for the conduct of such interstate or intrastate business (that is, cigarettes held for sale outside the jurisdiction of the CBRCTB) without affixing the stamps required by this article. Any such interstate or intrastate stock shall be kept entirely separate and apart from the CBRCTB-stamped stock, in such a manner as to prevent the commingling of the interstate or intrastate stock with the CBRCTB stock.

(i) Any dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost, whether by negligence, theft or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

(j) It shall also be the duty of each dealer or other person liable for the tax to maintain and keep for a period of three (3) years, not including the current calendar year, records of all cigarettes received, sold, stored, possessed, transferred, or handled by such person in any manner whatsoever, whether the same were stamped or unstamped, to make all such records available for audit, inspection, and examination at all reasonable times, as well as the means, facilities and opportunity for making such audit, inspection or examination upon demand of the board.

(k) Any penalty or interest assessed on a dealer, registered agent, or other person liable for the tax imposed under this article shall become part of the tax.

Sec. 54-535. Registered agents.

(a) Any dealer or other person liable for the tax who shall sell, use, store, possess, distribute or transport cigarettes within or into the Town shall first make application to the CBRCTB to qualify as a registered agent. The application form shall require such information as the CBRCTB deems necessary for the administration and enforcement of this article. Applications shall be subject to yearly registration fees for all wholesale dealers and all cigarette machine operators. Applicants shall provide a surety bond to the CBRCTB in the

amount of one hundred and fifty (150) percent of the applicant's average monthly tax liability. Such bonds shall be issued by a surety company authorized to do business in the Commonwealth of Virginia. Such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year. In the event a surety bond expires or lapses, the registered agent shall promptly replace same. Any applicant whose place of business is outside the area subject to enforcement by the CBRCTB shall automatically, by filing virtue of filing of the application, be deemed to submit to the CBRCTB's legal jurisdiction and to appoint the administrator for the board as agent for any service of lawful process, unless the applicant designates an attorney with offices within the Town upon which lawful process is to be served.

(b) Upon receipt of a properly completed application and the required surety bond, the CRBCTB shall determine whether the applicant qualifies to be a registered agent. The CBRCTB will issue to qualified applicants a yearly registered agent permit to enable such agent to purchase, sell, use, store, possess, distribute or transport within or into the Town, CBRCTB-stamped cigarettes.

(c) By submitting an application, registered agents obligate themselves to the reporting and payment requirements placed upon them by this article and the rules and regulations as from time to time may be promulgated by the CBRCTB.

(d) When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the CBRCTB shall impose a late reporting penalty of ten per cent (10%) of the gross tax due or $10.00, whichever is greater; provided that no penalty and interest shall be assessed if an extension is granted by the board under section 54-544 of this ordinance and the report is filed and tax paid within the extended time period.

(e) The CBRCTB also may require such registered agent to provide proof that the agent has complied with all applicable laws of the Commonwealth of Virginia to legally conduct such business and to file financial statements showing all assets and liabilities.

(f) The CBRCTB may revoke or suspend any registered agent's permit due to failure to file tax reports in a timely manner, non-payment of taxes due, or if the cigarette tax surety bond should lapse or become impaired for any reason.

(g) Registered agents must account for all CBRCTB authorized tax stamps purchased. Periodic audits may be conducted to determine any unaccounted variance between the number of stamps purchased and the number of stamps reported, and an assessment will be made for all unaccounted stamps. Any assessment of registered agents located outside the jurisdictions of the CBRCTB will be based upon the average sales of packages of cigarettes by jurisdiction during the audit period. For registered agents located within the jurisdictions of the CBRCTB, any assessment will be based upon the tax rate of the jurisdiction in which they are located ("jurisdictional tax"). In addition, there will be a penalty for non-reporting of ten (10) percent of the gross tax due.

Sec. 54-536. Requirements for retail dealers.

(a) Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes for the purpose of sale within the Town to ultimate consumers shall purchase cigarettes only from registered agents. Retail dealers shall provide the registered agent with the business trade name and physical address where the cigarettes will be placed for sale to the public. Cigarettes purchased for personal use cannot be brought into a business for resale. Only properly registered and licensed retail stores may sell cigarettes to the public. To be properly registered and licensed, a retail store must first have a valid Virginia state sale and use tax certificate and valid retail business license issued by the Town. Cigarettes must be purchased and stored separately for each business location.

(b) All copies of cigarette purchase invoices/receipts must be retained by the retailer for a period of three years and shall be made available to the CBRCTB upon request for use in conducting audits and investigations. All copies of cigarette purchase invoices/receipts must be stored at the business retail location for a period of one year from date of purchase. Failure to provide cigarette invoices/receipts may result in confiscation of cigarettes until such invoices/receipts are produced and can be reviewed by the Board to verify the proper tax has been paid.

(c) The retail dealer shall ensure that all cigarettes placed for sale or stored at each location are properly taxed and stamped. Cigarettes found without the CBRCTB stamp or the proper jurisdictional tax paid will be seized by the tobacco revenue agents of the board.

(d) Retail dealers must make their places of business available for inspection by CBRCTB tobacco revenue agents to ensure that all cigarettes are properly tax-stamped, and all cigarette taxes are properly paid.

Sec. 54-537. Presumption of illegality; seizure of contraband goods, sealing/seizing of machines.

(a) If any dealer, cigarette machine operator or other person liable for the tax imposed by this article is found to possess any cigarettes without the tax imposed by this article paid or the proper tax stamp affixed, there shall be a rebuttable presumption that any such dealer, cigarette machine operator or other person shall be in possession of untaxed cigarettes in violation of this article.

(b) If any cigarettes are placed in any vending machines within the Town, then there shall be a rebuttable presumption that such cigarettes were placed in that machine for sale within the Town. If any vending machine located within the Town contains cigarettes upon which the CBRCTB tax stamp has not been affixed or on which the tax imposed by this article has not been paid or containing cigarettes placed so as to not allow visual inspection of the CBRCTB tax stamp through the viewing area as provided for by the vending machine manufacturer, then there shall be a rebuttable presumption that the machine contains untaxed cigarettes in violation of this article.

(c) Any cigarettes, vending machines, cigarette tax stamps or other property found in violation of this article shall be declared contraband goods and may be seized by the CBRCTB. In addition to any tax due, including penalty and interest thereon, the dealer or other person liable for the tax possessing such untaxed cigarettes or tax stamps shall be subject to criminal penalties herein provided.

(d) In lieu of seizure, the CBRCTB may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

(e) All cigarette vending machines shall be plainly marked with the name, address and telephone number of the owner of said machine.

Sec. 54-538. Illegal acts.

(a) It shall be unlawful and a violation of the article for any dealer, registered agent, or other person liable for the tax:

(1)To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof, or to fail or refuse to perform any of the duties imposed upon such person under the provisions of this article or to fail or refuse to obey any lawful order which may be issued under this article; or

(2)To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps; or

(3)To sell, offer for sale, or distribute any cigarettes upon which the CBRCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid; or

(4)To possess, store, or use, or to authorize or approve the possession, storage or use of, any cigarette packages upon which the CBRCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid, provided that mere possession of untaxed cigarettes of not more than six cartons (sixty packages) shall not be a violation of this ordinance; or

(5)To transport, or to authorize or approve the transportation of, any cigarette packages in quantities of more than six (6) cartons (sixty packages) into or within the Town upon which the CBRCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid, if they are: (A) not accompanied by a receipt/bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or (B) accompanied by a receipt/bill of lading or other document which is false or fraudulent in whole or part; or (C) accompanied by a receipt/bill of lading or other document indicating: (i) a consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax on the jurisdiction of destination has been paid and said cigarettes bear

the tax stamps of that jurisdiction; or (ii) a consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate and, where applicable, any licenses issued by the Commonwealth or local jurisdiction of destination; or

(6)To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or

(7)To remove from any package any stamp with intent to use or cause the same to be used after same has already been used or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had theretofore been used for evidence of the payment of any tax prescribed by this article or to sell, or offer to sell, any stamp provided for herein; or

(8)To sell, offer for sale or distribute any loose or single cigarettes; or

(9)To perform any act that violates the regulations and resolutions promulgated by the Board.

(b) Cigarettes found in quantities of more than six cartons (60 packages) within the Town shall be conclusively presumed to be for sale or use within the Town and may be seized and confiscated if they are in transit and fall within subsection (5) above or they are not in transit and the tax imposed under this article has not been paid, nor have arrangements for payment been made and approved. This subsection shall not apply to cigarettes in the possession of distributors or public warehouses that have filed notice and appropriate proof with the CBRCTB that those cigarettes are temporarily within the Town and will be sent to consignees or purchasers outside of the Town in the normal course of business.

Sec. 54--539. Membership in the Chesapeake Bay Region Cigarette Tax Board.

(a)This ordinance adopted by the Town, pertaining to the Town’s membership in the Chesapeake Bay Region Cigarette Tax Board is hereby made a part of this article by reference.

(b)Any direct conflict between the powers granted to the CBRCTB in the ordinance pertaining to the Town’s membership in the Chesapeake Bay Region Cigarette Tax Board, and herein incorporated by reference and the powers granted to the CBRCTB in this article shall be resolved in favor of this article, however, the powers granted herein and in said ordinance shall be read cumulatively.

(c)The CBRCTB's fiscal year shall be from July 1 through June 30.

Sec. 54-540. Powers of the Chesapeake Bay Region Cigarette Tax Board.

The CBRCTB may delegate any of its powers to its administrator or employees and may adopt regulations regarding the administration and enforcement of the provisions of this article.

(a) In addition to those duties specified in Virginia Code §58.1-3832.1 and the powers of administration and enforcement enumerated in this ordinance, the CBRCTB shall be granted the following additional powers:

(1)To sue and be sued in its own name;

(2)To prescribe the design of a stamp(s) and to issue and sell said stamps to authorized dealers;

(3)To establish different classes of taxpayers;

(4)To promulgate resolutions for the assessment and collection of cigarette taxes and the enforcement of this ordinance;

(5)To conduct inspections of any place of business in order to enforce the provisions of this ordinance and all resolutions of the CBRCTB;

(b) The board may employ legal counsel, bring appropriate court action in its own name to enforce payment of the cigarette tax or penalties and interest owed and file tax liens against property of dealers and other persons responsible for collection and payment of the tax imposed by this article.

(c) The CBRCTB is authorized to enter into an agreement with the Virginia Department of Taxation under which a registered agent who is also qualified to purchase Virginia Revenue Stamps, may qualify to purchase Dual Virginia - CBRCTB stamps from the Virginia Department of Taxation. Authority to purchase dual Virginia - CBRCTB stamps is granted solely by the CBRCTB and may be revoked or suspended for violations of this ordinance or resolutions adopted by the Board.

(d) The CBRCTB may appoint certain employees as tobacco revenue agents, who shall be required to carry proper identification while performing their duties. Tobacco revenue agents are further authorized to conduct inspections of any place of business and shall have the power to seize or seal any vending machines, seize any cigarettes, counterfeit stamps, or other property found in violation of this article and shall have the power of arrest upon reasonable and probable cause that a violation of this article has been committed. The CBRCTB is authorized to provide its tobacco revenue agents with (1) firearms for their protection; (2) emergency equipped vehicles while on duty; and (3) other equipment deemed necessary and proper.

(e) The CBRCTB may exchange information relative to the sale, use, transportation, or shipment of cigarettes with an official of any other jurisdiction entrusted with the enforcement of the cigarette tax laws of said other jurisdiction.

Sec. 54-541. Jeopardy assessment.

If the administrator of the CBRCTB determines that the collection of any tax or any amount of tax required to be collected and paid under this article will be jeopardized by delay, the administrator shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties and interest. In the case of a current period for which the tax is in jeopardy, the administrator may declare the taxable period immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the person owing the tax, together with a demand for immediate payment of the tax based on the period declared terminated, and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by this article for filing a return and paying the tax has expired.

Sec. 54-542. Erroneous assessment: notices and hearings in event of sealing of vending machines or seizure of contraband property.

(a) Any person assessed by the CBRCTB with a cigarettes tax, penalties and interest, or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this article, who has been aggrieved by such assessment, seizure or sealing may file a request for a hearing before the administrator for the CBRCTB for a correction of such assessment and the return of such property seized or sealed.

(b) Where holders of property interest in cigarettes, vending machines, or other property are known at time of seizure or sealing, the CBRCTB shall send notice of seizure or sealing to the holders of such property interests by certified mail within twenty-four hours of the seizure or sealing. Where holders of property interests are unknown at time of seizure or sealing, CBRCTB shall have been deemed to give sufficient notice to such unknown interest holders by posting such notice to a door or wall of the room or building that contained such seized or sealed property. Any such notice of seizure or sealing, and any notice of assessment of tax, penalty and interest, shall include procedures for an administrative hearing for correction of the assessment and return of such property seized or sealed and an opportunity to assert affirmative defenses.

(c) A hearing shall be requested in writing within ten (10) days of the notice of the contested assessment, seizure or sealing, and the request shall set forth the reasons why said tax, penalties and interest, cigarettes, vending machines or other property should be returned or released. Within five (5) days after receipt of such hearing request, the administrator shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within fifteen (15) days of the date the administrator's notice is mailed. Any such request for a hearing shall be denied if the assessed tax, penalties and interest has not been paid as required or if the request is received more than ten (10) days from the first notice to the petitioner of such assessment, seizure or sealing. Within five (5) days after the hearing, the administrator shall notify the petitioner, by registered mail, whether the request for a correction of the assessment and the release of seized or sealed property has been granted or refused.

(d) Appropriate relief shall be given by the administrator if the preponderance of the evidence shows that the tax was erroneously assessed because (i) the cigarettes, vending machines or other property were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines, or other property were seized or sealed; or (ii) petitioner was authorized to possess the untaxed cigarettes. If the administrator is satisfied that the tax was erroneously assessed, the administrator shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any petitioner who is dissatisfied with the written decision of the administrator may within thirty (30) days of the date of such decision, appeal such decision to the appropriate court in the jurisdiction where the seizure or sealing occurred.

Sec. 54-543. Disposal of seized property.

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the CBRCTB after any petitioner has exhausted all administrative appeal procedures. No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax and penalties assessed.

Sec. 54-544. Extensions.

The administrator, upon a finding of good cause, may grant an extension of time to file a tax report upon written application for a period not exceeding thirty (30) days. Except as hereinafter provided, no interest or penalty shall be charged, assessed or collected by reason of the granting of such an extension.

Sec. 54-545. Penalty for violation of article.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand five hundred dollars ($2,500.00) or imprisonment for not more than twelve (12) months or by both such fine and imprisonment. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty or interest imposed by this article.

Sec. 54-546. Each Violation a separate offense.

The sale of any quantity, the use, possession, storage or transportation of more than six (6) cartons (sixty (60) packages) of cigarettes upon which the CBRCTB tax stamp has not been affixed or the proper jurisdictional tax has not been paid shall be and constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.

Sec. 54-547. Severability.

If any section, phrase, or part of this article should for any reason be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the article; and every remaining section, clause, phrase or part thereof shall continue in full force and effect.

This Ordinance shall become effective on January 1, 2023.

_____

J. Arthur Leonard, Mayor

Attest:

_____

Michael T. Tolbert, Town Manager

AN ORDINANCE APPROVING TOWN OF CHINCOTEAGUE MEMBERSHIP IN A JOINT ENTITY KNOWN AS THE CHESAPEAKE BAY REGION CIGARETTE TAX BOARD

WHEREAS, pursuant to the authority granted to localities under § 15.2-1300 of the Code of Virginia, as amended, the Town Council of the Town of Chincoteague, Virginia has determined that membership in the Chesapeake Bay Region Cigarette Tax Board (the "CBRCTB") would serve the public interest in promoting the efficient administration, collection, accounting, disbursement, compliance monitoring and enforcement of cigarette taxes assessed by the Town and the other localities desiring to join the Board; and,

WHEREAS a public hearing on this proposed Ordinance was held by the Town Council of the Town of Chincoteague, Virginia on September 6, 2022, duly advertised as required by law and considered for adoption; and,

WHEREAS, the Town Council has reviewed an agreement establishing the Board and defining its powers, duties, and other procedures, the text of which is attached hereto and incorporated herein as "Exhibit A," and agrees with the terms as set forth therein; and,

WHEREAS, the Town Council of Town of Chincoteague, Virginia has been notified that the requisite number of localities have approved the formation of the Board and the aforementioned agreement, and the Town Council wishes to authorize the Town's membership therein and authorize the execution of said agreement on the Town's behalf.

NOW WHEREFORE, the Town Council of Town of Chincoteague hereby **ORDAINS AS FOLLOWS**:

1. Under authority of 15.2-1300, the Town's membership in the Chesapeake Bay Region Cigarette Tax Board, is hereby approved;

2. The agreement, attached hereto as Exhibit A, is hereby APPROVED and the Town Manager is authorized to execute the same on behalf of the governing body; and,

3. The powers and authority of the CBRCTB, as set forth in the agreement are hereby **APPROVED**.

This Ordinance shall be effective January 1, 2023.

_____

J. Arthur Leonard, Mayor

Consider Amendment to Meals Tax

Councilman Savage explained that the Ordinance Committee agreed to recommend to Council the Town Manager's recommended revisions to the Meals Tax Ordinance, Section 54-306.

Councilman McComb motioned, seconded by Councilwoman Bowden that Section 54-306 of the Town Code be amended to eliminate the existence of a Meals Tax Committee and that the required distribution of tourism funds be allocated as defined in the Ordinance. Unanimously approved.

Section 54-306 of the Town Code requires a minimum of 10% of all meals tax collections to be dedicated to tourism as recommended by the mayor's meals tax committee annually. For the last several years, the 10% requirement has been satisfied by distributing 5% to the Chincoteague Center and 5% to the Chamber of Commerce. During the FY22 budget year, distributions to the Chamber were halted in March due to revenues exceeding the budgeted amount for this line item.

It is proposed that Section 54-306 be revised to eliminate the meals tax committee and its annual review of meals tax distributions and that the 10% tourism mandate be met by distributing 5% to the Chamber of Commerce and another 5% to the Town's Center fund which contributes to the operation of the Chincoteague Center. The new ordinance would read as follows.

Sec. 54-306.

a. A minimum of ten percent of the tax levied under the article shall be used to promote tourism. ~~The mayor will create a committee composed of island residents, one each from a restaurant, Chincoteague Chamber of Commerce and town council to recommend disposition of revenues collected to the town council.~~ *Five % of the tax collected shall be distributed to the Chincoteague Chamber of Commerce and 5% retained by the Town for the operation of the Chincoteague Center. Distributions will be made monthly based on the tax collected for that month. The Chamber of Commerce*

Executive Director will prepare an annual report to the Council in February outlining the specific use of the distributed funds for the previous fiscal year.

b. ~~A minimum of 5% shall be used for drainage or park and recreation related projects determined by the council each year.~~

Mayor and Council Comments

Vice Mayor Bott suggested that during the winter months they look into possible revisions of the mosquito control process such as targeted spraying and hitting larva. He feels they can look into doing something more efficient and better than what they're doing.

Councilman McComb agreed.

Councilman Taylor stated that it is nice to have the carnival back, people enjoyed it and things are going back to normal. He added that they do the best they can with what they have.

Mayor Leonard closed with "Roll Tide".

Closed Meeting in Accordance with §2.2-3711 (A) (3 & 7) of the Code of Virginia for discussion and consideration of the acquisition of real property for a public purpose and consultation with staff pertaining to probable litigation.

Councilman Savage motioned, seconded by Councilwoman Bowden to go into a closed meeting in accordance with §2.2-3711 (A) (3 & 7) for discussion and consideration of the acquisition of real property for a public purpose and consultation with staff pertaining to probable litigation.
Ayes: Bott, Bowden, McComb, Richardson, Savage, Taylor
Nays: None
Absent: None

Certification of Closed Meeting in Accordance with §2.2-3712 (D) of the Code of Virginia:
Councilman Savage motioned, seconded by Councilwoman Bowden in accordance with §2.2-372 (D) of the Code of Virginia that the Council certify that to the best of each Council Member's knowledge.

(1) only public business matters lawfully exempted from opening meeting requirements under this chapter and

only such public business matters were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered. All present were in favor and the motion was carried.
Ayes: Bott, Bowden, McComb, Richardson, Savage, Taylor
Nays: None
Absent: None

Adjourn
Councilman Savage motioned, seconded by Councilwoman Bowden to adjourn.
Unanimously approved.

_____	_____
J. Arthur Leonard, Mayor	Michael T. Tolbert, Town Manager