

**MINUTES OF THE AUGUST 11, 2022
ORDINANCE COMMITTEE MEETING**

Members Present:

Jay Savage, Councilman
Denise Bowden, Councilwoman
William T. McComb, Councilman

Others Present:

Arthur Leonard, Mayor
Ellen Richardson
William T. McComb
Michael T. Tolbert, Town Manager

Call to Order

Chairman Savage called the meeting to order at 5:00 p.m.

Public Comment

Chairman Savage opened the floor for public comment.

- Chincoteague Chamber Executive Director, Mrs. Evelyn Shotwell advised that the Chamber Board supports the changes to the Meals Tax Ordinance of 10% allocation of Meals Tax revenues for the promotion of tourism. They also support half of the allocation to be directed to the Chamber for the promotion of tourism. She handed supporting documents to the Committee. She explained the graph and information of how they spend the Meals Tax they receive from the Town.

- Mrs. Pat Farley, 3243 Lisa's Lane, thanked the Committee for considering a Burning Ordinance. She explained that her neighbors and herself, have been experiencing a DIY demolition of a neighboring property. She advised that this was accompanied with excessive burning of large trees and debris from the demolished house. She asked the Committee to look at these events as a reason to consider more restrictive burn ordinances. She explained that most neighbors would not burn trees and debris in excessive manner. However, she feels there is a need for more careful burn laws. She further described the excessive burning and hazards with multiple large piles that burned for days and containers that did not contain the sparks. She gave a handout and pictures to the Committee. She understands that it is impossible to measure smoke, however, feels an ordinance can limit the amount of fires producing smoke. She feels that smoke from fires should never be so thick that people have to leave their properties. Mrs. Farley understands that creating and enforcing regulations aren't easy, but without increased regulations they have the possibility of neighborhoods throughout the Island being disrupted, burned, or devalued by one neighbor.

- Mr. J. Author Leonard, 6220 Leonard Lane, advised that his father, Mr. Donald Leonard had an agreement with the Town to have an open burn pit. He asked that this be added to the Ordinance. He stated that their property is the only agricultural land on the Island. He feels it would be a simple added verbiage to state agricultural land is exempt. He feels bad for

Mrs. Farley and a next-door neighbor burning demolition debris would be terrible. He also stated that where his burn pit is, they are at least ½ a mile from any structure. He understands about the prevailing winds, and he tries not to burn when the wind is blowing toward Wildcat or Eastside. Mr. Leonard stated that the majority of what is burned are tree limbs, brush, and farm stuff. They call into the Police Station to advise when they plan to burn, it's inspected, and they are approved to burn. They then call to let them know the fire is out. Sometimes it's attended and sometimes it's unattended. He again asked the Committee if they would exempt agricultural property.

Agenda Adoption

Chairman Savage asked if they would move the item "Consider Burning Ordinance" to the 1st spot.

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

Consider Burning Ordinance

Town Manager Tolbert advised Building and Zoning Administrator Bowden was made aware of this. The DEQ was contacted and declined to act on the complaint because there was no evidence of hazardous substances being burned. Building and Zoning Administrator Bowden found it in the Virginia Administrative Code, and it is regulated by the Virginia Pollution Control Board.

Town Manager Tolbert included the Code in the packet. He stressed that none of the sections would have prevented the situation that prompted the citizen's complaint. He added that the Committee can pursue an ordinance regulating open burning. There is a model ordinance that is approved by the Virginia Pollution Control Board contained in this document included in the packet. He added that if it is more restrictive, they may approve it, but if it is less restrictive, they will not. The model ordinance only references "open burning". He read the definition.

There was discussion about open burning, what is being burned, and the proximity of neighboring homes to the burn.

Town Manager Tolbert advised that in the State Code you can't burn refuse in an area there is refuse collection.

Councilwoman Bowden doesn't want to get into a position where she can't have a fire pit and Mr. Leonard can't burn brush and limbs. She stated that there are a lot of things in the Code that prevents this from happening again. She also stated that it's not just a nuisance, but the safety aspect is horrific.

Town Manager Tolbert advised that if you're going to burn, it has to be on-site, it can't be taken to another site.

Chairman Savage stated that anything they adopt will be in supplement to the Virginia Regulations.

Town Manager Tolbert stated that a local ordinance is considered a supplement to the State Code. If it is more restrictive, the State will approve it and if it is less restrictive, they will not.

Councilwoman Bowden asked how they change it so that they can't burn within 300 feet of a residence.

Town Manager Tolbert suggested they make the changes in the model ordinance, and he will incorporate those and present it to the Committee again for approval.

Councilwoman Bowden doesn't want to see any more burning like in the pictures that were presented. She stated that it comes down to human nature and being considerate. She added that they should be looking out for the people around them.

Councilman McComb suggested adding a clause that allows for agricultural areas as well.

Town Manager Tolbert added that he will go through this and have it ready for the next Ordinance Committee meeting.

Consider Cigarette Tax Ordinance

Town Manager Tolbert stated that Supervisor Tarr advised that the County would be taking advantage of the new state law allowing localities to charge a tax on cigarettes. The Code is written as such that if the locality wishes to collect the tax instead of the county, they can do so. They can collect the tax and allow the county to collect an additional tax. Council advised they would like to collect the tax, so he contacted Mr. Mason to advise. Mr. Mason gave him all the information he needed to set this up. The Town can adopt by ordinance to become a member of the Chesapeake Bay Region Cigarette Tax Board. This is made up of 10 existing members and 9 of the 10 members collect the maximum amount the state allows. He added that 1 member, Accomack County, only collects \$0.10 per pack. Being members of the Board makes it easier to collect the tax. The Northern Neck Planning District Commission does the work for the Town. They put out all the information, collect the tax, enforce the Ordinance, and send a check monthly. They take 5% off the top of all that they collect from those who participate. He has talked with the participating attorneys who have looked at the ordinance and made the appropriate corrections. He presented and reviewed the draft ordinance. He recommended they approve this, and it can go to Council's Workshop meeting next week.

Town Manager Tolbert stated that Mr. Mason went to the tobacco companies for a report of volume of sales. The County decided, based on this report they didn't want to impose the full \$0.40.

Councilman McComb motioned, seconded by Councilwoman Bowden to join the Chesapeake Bay Region Cigarette Tax Board and to approve the tax rate of \$0.40 per pack. Unanimously approved.

DRAFT

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 _____, 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

Councilwoman Bowden asked if they could vote at the Council meeting what they can do with this tax or does it have to come back to the Ordinance Committee.

Town Manager Tolbert stated that he has talked to the Director of the NNPDC and gave him all of the retail outlets on the Island. He is working on a total volume to see how much taxes it would be.

Consider Modification to Meals Tax Ordinance

Town Manager Tolbert advised that for the last few years, Meals Tax revenue has been budgeted for \$110,000. They budget half to the Chamber and half to the Center. In the last fiscal year, the budgetary revenue was reached, and Council voted to extend the revenue payment to the Chamber and Center. In order for this not to be addressed each year, it was suggested they modify the Meals Tax Ordinance. He also advised that the Meals Tax Committee met on an annual basis who would say they would satisfy the 10% reinvestment in tourism by recommending where to invest the money. The Meals tax Committee was abolished. It was suggested they make 5% permanently dedicated to the Chamber and 5% permanently dedicated to operations of the Center. He reviewed the existing Ordinance and proposed changes. He rewrote and read the Ordinance to reflect this.

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.~~

Councilwoman Bowden asked Chamber Executive Director Shotwell for the actual figures of the expenditures of the funds they received from the Town.

Chamber Executive Director Shotwell advised they have a chart of accounts and will submit the expenses including the amounts to the Town.

Chairman Savage asked that because it is to promote tourism, will the Town come up with the guidance for the Center.

Town Manager Tolbert stated that he was asked to develop a strategic plan, which he has done and will present it to Council. He understands that when Meals Tax was instituted, passed, and established, restaurant owners requested that some of the money be put back into tourism to keep people coming. One of his goals is to make sure the Center is used more locally than it has in the past.

Councilman McComb motioned, seconded by Councilwoman Bowden to recommend to Council the Ordinance presented by the Town Manager as written. Unanimously approved.

Consider Modification of Noise Ordinance

Town Manager Tolbert advised that there were recent questions as how the Town's Noise Ordinance compares to other locations and if its adequate. The Ordinance is specific and very detailed. It was written in 1999. He included in the packet other localities and decibel criteria. He stated that in Nags Head, NC you can buy a permit to exceed the decibel limit. He tried to stay with coastal communities and neighbors who had more in common. He as unable to find limitations in the State Code for decibel limits. OSHA has a lot of limitations on noise and machine levels. The Town allows 2 occurrences within 30 days.

Chief Fisher reiterated and added that once you exceed the allowable occurrences the fine is \$500.

Town Manage Tolbert some municipalities don't use decibel meters, they use distance from the source. They also use decibels broken down to residential and commercial areas.

Councilwoman Bowden asked if they have a lot of complaints.

Chief Fisher responded that they have had maybe 5 complaints this past year that were actually called into the Police Department.

Councilwoman Bowden also stated that just because there is no complaint doesn't mean they aren't violating the Ordinance. She asked if the Police officers could just ride by and tell them they're too loud.

Chief Fisher advised they could not, they have to have a victim.

Town Manager Tolbert advised this is under the Nuisance section of the Ordinance and they can do nothing unless there is a complaint.

Councilwoman Bowden stated that if they're too loud, it's still breaking the law.

Chief Fisher stated that the way the Ordinance is written, they have to take the meter to the closest corner of the structure of the complainant pointing toward the source. He added that depending on the wind, you could hear it all the way toward north Main Street, but 2 doors south, they may not hear it at all.

Councilwoman Bowden asked if they could change the Ordinance so that if a Police Officer rode by and heard it, they could stop and take a reading.

There was further discussion as to the times of the complaints, and the complaints being from outside noises.

Town Manager Tolbert stated that he has read in some of the ordinances that inside noise could require soundproofing interior walls.

Councilwoman Bowden reviewed the allowable decibel levels from different localities.

Chief Fisher stated that he thought that in Ocean City didn't allow any outside noise after a certain time.

Councilwoman Bowden asked if there have been problems that resulted in the Committee reviewing this Ordinance.

Town Manager Tolbert advised that he had a few members of Council ask about it because of earlier complaints this summer. He added that they are just reviewing the Ordinance.

Chairman Savage commented on proximity of an outside group playing next to 2 motels.

There was discussion about the solid waste contractor emptying dumpsters after 7:00 a.m. Town Manager Tolbert was advised they plan to go to fiberglass dumpsters with less noise and could dump earlier in that case. They also discussed who enforces Town Ordinance. The Police enforce the criminal ordinances, and the Building and Zoning Administrator enforces the administrative ordinances. There were further comments.

Adjournment

Councilwoman Bowden motioned, seconded by Councilman McComb to adjourn.

Unanimously approved.