



TOWN COUNCIL WORKSHOP MEETING

August 18, 2022 at 5:00 PM

Council Chambers – Town Municipal Center

AGENDA

CALL TO ORDER – *Mayor Leonard*

INVOCATION

PLEDGE OF ALLEGIANCE – *Mayor Leonard*

PUBLIC COMMENT – *Mayor Leonard*

AGENDA ADOPTION – *Mayor Leonard*

CONSIDER CIGARETTE TAX ORDINANCE – *Councilman Savage*

- [1.](#) Cigarette Tax Ordinance Memo to Council
- [2.](#) CBRCTB Ordinance
- [3.](#) CBRCTB Agreement
- [4.](#) Cigarette Tax Ordinance

CONSIDER MEALS TAX ORDINANCE MODIFICATION – *Councilman Savage*

- [5.](#) Meals Tax Memo to Council

CONSIDER PERSONAL PROPERTY TAX RATE– *Mr. Tolbert*

- [6.](#) Personal Property Tax Rate Reduction Memo

MAYOR & COUNCIL ANNOUNCEMENTS – *Mayor Leonard*

CLOSED MEETING *in Accordance with § 2.2-3711 (A) (1,5) of the Code of Virginia perspective business opportunities and evaluation of staff*

CERTIFICATION OF CLOSED MEETING *in Accordance with § 2.2-3712 (D) of the Code of Virginia*

ADJOURN

Town of Chincoteague, Inc.



TO: Mayor Leonard and Members of Council
FROM: Michael Tolbert, Town Manager
DATE: August 18, 2022
SUBJECT: Cigarette Tax Ordinance

At their August 11 meeting, the Ordinance Committee voted to recommend the imposition of a \$0.40 per pack cigarette tax which is the maximum allowed by State Code. To facilitate collection of the tax, I have contacted the Chesapeake Bay Region Cigarette Tax Board (CBRCTB) concerning membership. A membership in the CBRCTB would allow the board to collect the imposed tax and reports from retailers located within the town limits and remit the tax to the Town less a 5% administration fee. The Board would also conduct enforcement. Membership in the CBRCTB would be the most efficient way for the Town to benefit from the tax.

To impose the tax, the town must adopt an ordinance modifying Chapter 54 adding article VII “Cigarette Tax” defining the tax and one to allow the membership in the CBRCTB. These have been reviewed by the Ordinance Committee and are recommended here for the Council’s approval. As written, the ordinance would go into effect on January 1, 2023.

Council is asked to vote proceed to public hearing on the proposed “Cigarette Tax” ordinance and the ordinance to join the CBRCTB.

Approval to proceed to will trigger a public hearing at the September 6 regular meeting on both the tax and board membership.

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 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

CHESAPEAKE BAY REGION CIGARETTE TAX AGREEMENT

THIS AGREEMENT, is entered into and dated as of the latest execution and acknowledgment by any party hereto, by and between

- (1) Westmoreland County, Virginia;
- (2) Lancaster County, Virginia;
- (3) Middlesex County, Virginia;
- (4) Essex County, Virginia;
- (5) Accomack County, Virginia;
- (6) Northampton County, Virginia;
- (7) Town of Montross, Virginia;
- (8) Town of Colonial Beach, Virginia;
- (9) Town of Urbanna, Virginia;
- (10) Town of Warsaw, Virginia;
- (11) Town of Chincoteague, Virginia; or any two or more of the foregoing;

WHEREAS, the parties hereto desire to enter an Agreement for the purpose of the establishment of the Chesapeake Bay Region Cigarette Tax Board for the joint administration, collection and enforcement of their respective Cigarette Tax Ordinances pursuant to the provisions of these ordinances and Section 15.2-1300 and 58.1-3832, *et seq.*, of the Code of Virginia, (1950), as amended;

NOW THEREFORE, the parties enter into the following agreement:

1. **NAME AND DURATION**

The Board shall be called the Chesapeake Bay Region Cigarette Tax Board. Its duration shall be perpetual, subject to the provisions of Paragraph 8 hereof.

2. **MEMBERSHIP AND VOTING POWERS**

The Board shall be composed of one representative from each jurisdiction hereinbefore named or later added with consent of the Chesapeake Bay Region Cigarette Tax Board. Said representative may designate an alternate to attend meetings and vote in his or her place; however, each jurisdiction shall be entitled to only one vote. Action of the Board shall be by majority vote.

3. **OFFICERS AND MEETINGS**

Each year, the Board shall elect a Chairman, Vice-Chairman and Secretary/Treasurer, who shall serve at the pleasure of the Board. The Officers of the Board shall be chosen from the jurisdictional representatives. Said officers shall be empowered to sign in the name of the Board on all legal documents, including bank deposits and withdrawals. The Board shall meet from time to time as deemed necessary by the Chairman.

4. **POWERS OF THE BOARD**

The Board shall be delegated the following powers:

- a. Assessment, collection and disbursement of the cigarette tax for each participating jurisdiction;
- b. Audit of the sale or use of cigarettes within each participating jurisdiction;
- c. Provision of information for criminal prosecution by the affected participating jurisdictions;
- d. Provide guidance and oversight to the designated Administrative/Fiscal Agent;
- e. Management of a general operating fund to ensure proper funding of Board operations on an ongoing basis;
- f. Designation of a depository bank or banks;
- g. To hold and convey personal property. The Board shall have no power to hold or convey real property;
- h. To enter into contracts;
- i. Any other powers granted to the Board by the respective local ordinances and the Code of Virginia (1950), as amended.

5. **LIABILITY INSURANCE**

The Board shall maintain and have authority to secure insurance coverage as deemed appropriate. General liability insurance shall be maintained through a commercial policy, in limits of not less

than \$500,000.00. Any liability in excess of the amounts of insurance coverage will be shared by the members of the Board proportionately based upon each jurisdiction's share of the number of taxable packs of cigarettes reported in the twelve (12) months preceding the incident which gave rise to the liability, as compared to the taxable packs of cigarettes reported during that same time period in all the participating jurisdictions.

6. **Operational Provisions**

The Northern Neck Planning District Commission (NNPDC) is designated as the administrative/fiscal agent. Normal routine duties of the Board in administration and supervision of the Cigarette Tax Ordinances shall be delegated to the NNPDC. Actions and decisions of the NNPDC shall bind the Board unless patently wrongful or the result of willful misconduct, but the Board may at anytime overrule a decision or action by the NNPDC subject to lawful rights of third parties. The duties of the Administrative/Fiscal Agent shall include, but are not limited to, the following:

- a. Preparation of annual administrative cost estimates;
- b. As authorized by the Board, employment of or contracting for staff assistance including providing employee benefits, and, equipment and supplies.
- c. Preparation of reports as the Board may require;
- d. Authorization of disbursements from Board accounts

including, but not limited to, disbursements to the participating jurisdictions.

Each member jurisdiction will be charged a fee of 5% of the tax revenue to cover the NNPDC cost to act as administrative/fiscal agent as described above. In the event that the NNPDC costs exceed the amount collected from the 5% fee, each jurisdiction will be charged its pro-rata share of that amount based on its tax revenues as a percentage of the total tax revenues from all member jurisdictions collected.

7. **COLLECTION OF THE CIGARETTE TAX**

The cigarette tax shall be assessed and collected on the basis of the "reporting method" according to the respective ordinances and according to the rules, regulations and procedures adopted by the Board.

8. **DISBURSEMENT OF RECEIPTS, MANAGEMENT OF FUNDS**

Disbursements shall be made to each participating jurisdiction on a monthly basis. Prior to disbursement to jurisdictions, the 5% administrative fee shall be deducted from total revenues and allocated to the jurisdictions proportionately based upon the number of taxable packs of cigarettes reported within the jurisdiction during the month as compared to the total number of taxable packs of cigarettes reported in all the participating jurisdictions. The

disbursement to each participating jurisdiction shall be determined by the tax rate of the jurisdiction multiplied by the taxable packs of cigarettes reported within the jurisdiction, plus interest and penalties, plus the jurisdiction's proportional share of all other revenues, less discounts and proportional expenses.

All monies shall be deposited in the name of the Chesapeake Bay Region Cigarette Tax Board. All checks drawn on Board accounts shall require signature by the NNPDC Executive Director and a Board Officer.

9. **TERMINATION**

a. In the event any participating jurisdiction decides, by ordinance, to terminate its participation in the Board, notice to the Board shall be given sixty (60) days prior to its date of termination. The terminating jurisdiction shall receive within thirty (30) days of its date of termination its share of total revenues less proportionate expenses, operating fund, and depreciated value of physical property used by the Board. The representative of such terminating jurisdiction shall not serve on the Board beyond the termination date.

b. In the event the number of jurisdictions which desire to continue to participate in the Board is less than two (2) in number, the Board shall be dissolved and shall cease to exist. In such

event, the Board shall liquidate all assets and disburse to each jurisdiction participating at the time each such jurisdiction's share of the liquidated assets and all proceeds and monies held. Such distribution shall be based upon each jurisdiction's proportionate share of the number of taxable packs of cigarettes reported in the preceding twelve (12) months as compared to the taxable packs of cigarettes reported during that same time period in all the jurisdictions participating in the Board at the time the Board is dissolved.

10. **IMPLEMENTATION**

Each jurisdiction shall by ordinance signify its desire to be a member of the Board and its acceptance of the provisions of this Agreement.

This Agreement shall take effect upon the signature of the proper officials of any two (2) of the jurisdictions below and shall take effect as to any other jurisdiction upon signature of the proper official of such jurisdiction.

Westmoreland County, VA

By: _____

Printed Name

Title

Lancaster County, VA

By: _____

Printed Name

Title

Middlesex County, VA

By: _____

Printed Name

Title

Essex County, VA

By: _____

Printed Name

Title

Town of Montross, VA

By: _____

Printed Name

Title

Town of Colonial Beach, VA

By: _____

Printed Name

Title

Town of Urbanna, VA

By: _____

Printed Name

Title

Town of Warsaw, VA

By: _____

Printed Name

Title

County of Accomack, VA

By: _____

Printed Name

Title

County of Northampton, VA

By: _____

Printed Name

Title

Town of Chincoteague, VA

By: _____

Printed Name

Title

DRAFT [Note – form should be run by Muni Code since Town is in codification process]

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 hereby 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 CBRCTB 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

Town of Chincoteague, Inc.



TO: Mayor Leonard and Members of Council
FROM: Michael Tolbert, Town Manager
DATE: August 18, 2022
SUBJECT: Meals Tax Ordinance

At its August 11 meeting, the Ordinance Committee recommended changes to section 54-306 of the Code of Chincoteague for the disposition of Meals Tax.

The existing section 54-306 of the Town Code requires a minimum of 10% of all meals tax collections to be dedicated to tourism as recommended annually by the mayor's meals tax committee. 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.

The Committee recommends 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 this 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 percent of the tax collected shall be distributed to the Chincoteague Chamber of Commerce and five percent 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.*

Town of Chincoteague, Inc.

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

Council is asked to act on the above proposed ordinance.

Town of Chincoteague, Inc.



TO: Mayor Leonard and Members of Council
FROM: Michael Tolbert, Town Manager
DATE: August 18, 2022
SUBJECT: Personal Property Tax Rate

At the April 2021 workshop meeting, Council discussed the current and unusual phenomenon of appreciating personal property values and directed the Town Manager to determine the amount of increased assessments so that rates could be reduced in proportion.

Councilman McComb motioned, seconded by Councilwoman Bowden to lower the real estate tax rate to \$0.059/\$100 and reduce the personal property tax rate across the board to compensate for the increase in value, to collect less than a 1% increase in personal property taxes. Unanimously approved.

I have contacted the County and they have provided me with the Town's increase in personal property assessments for the Spring of 2022 over the Spring of 2021. This increase is approximately 28%. The difficulty in determining a proportional reduction, however, lies in predicting both future personal property values and inventory levels.

Used car values make up a significant portion of overall personal property levies and have risen substantially in the past several months.

The County reduced their personal property tax rate on vehicles, passenger trucks and motorcycles from \$3.72 to \$2.99 (20%) to mitigate the impact of taxes on the increased values of these types of vehicles. Recent automotive industry research confirms this year over year increase.

In June 2022, the average transaction price for a new light-vehicle was the highest on record at \$45,844, an increase of 14.5% compared to June of 2021, according to J.D. Power. Prices have continued to rise as OEMs have prioritized the production of higher trim level, more expensive models while simultaneously reducing incentive spending. (National Automotive Dealers Association, June 2022)

Town of Chincoteague, Inc.

This leads me to conservatively recommend a reduction in the personal property tax not to exceed 15%. The current personal property tax rate is \$0.85/\$100 of value. A 15% reduction would produce a new rate of approximately \$0.72/\$100 of assessed value.

Council is asked to approve an appropriate reduction in Personal Property Tax Rates.