



# AUGUST ORDINANCE COMMITTEE MEETING

August 11, 2022 at 5:00 PM

Council Chambers – Town Municipal Center

## AGENDA

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**CALL TO ORDER** - *Chairman Savage*

**PUBLIC COMMENT** - *Chairman Savage*

1. Public Speaking Rules - *Mr. Tolbert*

**AGENDA ADOPTION** - *Chairman Savage*

**CONSIDER CIGARETTE TAX ORDINANCE** - *Mr. Tolbert*

2. CRBCTB MEMBERSHIP ORDINANCE
3. CBRCTB AGREEMENT
4. CIGARETTE TAX ORDINANCE

**CONSIDER MODIFICATION TO MEALS TAX ORDINANCE** - *Mr. Tolbert*

5. MEALS TAX MEMO
6. MEALS TAX ORDINANCE

**CONSIDER MODIFICATION OF NOISE ORDINANCE** - *Mr. Tolbert*

7. NOISE ORDINANCE MEMO
8. NOISE ORDINANCE LOCALITY CHART
9. CHINCOTEAGUE NOISE ORDINANCE

**CONSIDER BURNING ORDINANCE** - *Mr. Tolbert*

10. Burning Ordinance Memo
11. State Open Burning Regulations

**ADJOURN**

# Town of Chincoteague, Inc.



## Rules for Public Comment:

1. All attendees wishing to speak shall sign up on the provided roster.
2. Speakers must preface all comments by stating their name and 911 address.
3. Comments shall be limited to (4) minutes per speaker.
4. A speaker cannot reserve or transfer time to another speaker.
5. Speakers must not use profanity, threatening language or otherwise be abusive of Council members or staff.
6. Speakers shall not address specific personnel matters which involve individual employees in a public meeting.
7. Members of the Council will not answer questions directly or engage with speakers.
8. Specific questions shall be directed to the Mayor who shall at his discretion, solicit a response from the appropriate staff member.

**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.

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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 \_\_\_\_\_, 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 [redacted] for each package containing twenty cigarettes and [redacted] 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 ( $\frac{3}{4}$  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 ( $\frac{3}{4}$  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

4879-8703-9277, v. 1

# Town of Chincoteague, Inc.



TO: Chairman Savage and Members of the Committee  
FROM: Michael Tolbert, Town Manager  
DATE: August 8, 2022  
SUBJECT: Meals Tax Ordinance

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.~~

## TAXATION

**ARTICLE V. EXCISE TAX (MEALS)\*****Sec. 54-291. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Cater:* The furnishing of food, beverages, or both on the premises of another, for compensation.

*Collector:* The Town Manager of the Town of Chincoteague or designee.

*Food:* All food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

*Food establishment:* Any place in or from which food or food products are prepared, packaged, sold or distributed in the town, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie

theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food

is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

*Meal:* Any prepared food or drink offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage,

## TAXATION

unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

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**\*State law reference**—Excise tax on meals, Code of Virginia, § 58.1-3840.

*Purchaser:* Any person who purchases food.

(Code 1977, § 6-35; Ord of 10-19-2000)

**Cross reference**—Definitions generally, § 1-2.

### **Sec. 54-292. Regulations for administration and enforcement.**

The town manager may issue regulations for the administration and enforcement of this article.

(Code 1977, § 6-50(A); Ord. of 4-1-1990)

### **Sec. 54-293. Enforcement.**

This article, in addition to enforcement as otherwise permitted by law, may also be enforced by way of injunctive relief to enjoin a violation by the circuit court of the county or any other court of competent jurisdictions on complaint by the town acting by and through the town manager.

(Code 1977, § 6-47; Ord. of 7-1-1996)

### **Sec. 54-294. Penalty for violation.**

(a) Any person who willfully fails or refuses to file a return as required under this ordinance shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is \$1,000.00 or less. Any person violating or failing to comply with any other provision of this ordinance shall be guilty of a class 1 misdemeanor

## TAXATION

(b) Except as provided in subsection (a) above, any corporate or partnership officer as defined in Virginia Code §58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this ordinance, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class 1 misdemeanor.

(c) Each violation of or failure to comply with this ordinance shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this ordinance.

(Code 1977, § 6-48; Ord. of 10-19-2000)

### **Sec. 54-295. Levied and rate.**

There is hereby imposed and levied by the town on each person a tax at the rate of five (5%) percent on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not. There shall be no tax if the total amount paid is twenty-five cents (\$0.25) or less; on larger amounts a fractional cent of tax due shall be rounded to the next higher cent.

(Code 1977, § 6-36; Ord. of 10-19-2000) (*Amended 6/17/10*)

### **Sec. 54-296. Exemptions.**

The following classes of transactions involving meals shall not be subject to tax under this article:

- (1) Food and beverages sold through vending machines.
- (2) Factory-prepackaged candy, gum, nuts and other items of essentially the same nature.
- (3) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary

## TAXATION

and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.

- (4) Meals furnished by a blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or navel purpose.
- (5) Alcoholic and non-alcoholic beverages sold in factory sealed containers.
- (6) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.
- (8) A grocery store, supermarket, or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.
- (9) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
- (10) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.

## TAXATION

- (11) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.
- (12) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, inform, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
- (13) Food and beverages furnished by a public or private local non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, inform, blind, handicapped or needy persons in their homes or at central locations.
- (14) Food and beverages sold on occasional basis, by a local non-profit education, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent, or religious purposes.

(Code 1977, § 6-46; Ord. of 10-19-2000)

**Sec. 54-297. Payment and collection.**

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this ordinance from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the



## TAXATION

Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.

(Code 1977, § 6-37; Ord. of 10-19-2000)

### **Sec. 54-298. Collections in trust for town.**

All amounts collected as taxes under this article shall be deemed to be held in trust for the town by the seller collecting them, until remitted to the town as provided by this article.

(Code 1977, § 6-38; Ord. of 10-19-2000)

### **Sec. 54-299. Reports and remittances.**

It shall be the duty of every person required by this ordinance to pay to the town the taxes imposed by this ordinance. Every corporation, partnership, firm, association, or group of individuals acting as a unit shall designate in writing to the town an officer or employee of such corporation, partnership, firm, association, or group whose duty it is to collect, report, and remit. The person or entity collecting the tax levied under this article shall make a report upon such forms as may be prescribed by the town manager, which report in any event shall show the amount of charges collected for meals and the amount of tax required to be collected for the designated reporting and collection period. Such report shall be signed and delivered to the Town Manager with the full remittance of such tax due. Such reports and remittances shall be made monthly on or before the 20th day of each said month and shall cover the amount of charges for meals and the tax collected during the month immediately preceding the month in which such report and remittance is required. If the remittance is by check or money order, the same shall be payable to the Town of Chincoteague. Such records shall be kept and preserved for a period of five (5) years. The town manager or his duly authorized agents shall have the power to examine such records at reasonable time and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this ordinance, and to make transcripts of all or any parts thereof.

(Code 1977, § 6-39; Ord. of 10-19-2000)

### **Sec. 54-300. Penalty and interest.**

## TAXATION

If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required under this article, there shall be added to the tax by the town manager a penalty in the amount often percent of the tax and interest thereon at the rate often percent per annum, which shall be computed upon the tax and penalty from the date such were due and payable.

(Code 1977, § 6-40)

### **Sec. 54-301. Procedure when tax not reported or collected.**

(a) If any person shall fail or refuse to collect the tax imposed under this article and to make, within the time provided for in this article, the reports and remittances required, the town manager shall cause to be prepared a notice thereof to such person, giving such person ten days in which to make the necessary reports and remit the appropriate tax, plus any applicable penalty and interest. The notice shall be posted to such person by registered or

certified mail, return receipt requested, to the address on file with the town or the last known address of such person and/or shall be delivered by the police department.

Failure to report and/or remit the appropriate tax, plus any applicable penalty and interest, within the ten-day period after posting and/or delivery of such notice, shall result in the immediate suspension of the business license of such person or the entity for which such person is charged for the collecting, reporting, and remitting of taxes, as well as the right of such business to operate within the town.

(b) Upon the failure or refusal of any such person to thereafter report and remit the appropriate tax, plus any applicable penalty and interest as required under this article, the town manager shall then proceed in such a manner as he may deem best to obtain facts and information on what to base his estimate of the proper amount of such tax due, plus penalty and interest. The town manager shall then proceed, based on the best information then available to him, to assess the amount of such tax, penalty and interest and shall cause such person to be notified thereof by registered or certified

## TAXATION

mail, return receipt requested, at the address on record with the town or the last known address of such person and/or delivery by the police department.

(c) Upon the submission of any necessary report and the remitting of the appropriate tax, plus any applicable penalty and interest, or the payment of the tax if assessed by the town manager, plus any applicable penalty and interest, such business license of the person or entity for which such person is charged for the collection, reporting, and remitting of such taxes shall be deemed to be reinstated.

(Code 1977, § 6-41; Ord. of 7-1-1996)

### **Sec. 54-302. Preservation of records.**

(a) *Generally.* It shall be the duty of every person liable for collection and remittance of the taxes imposed by this article to preserve for a period of four years records showing all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. The town manager shall have the authority and power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing this article and to make transcripts of all or any parts thereof.

(b)*Inspection of records by town manager:* The town manager shall have the authority to inspect the records of any restaurant after notifying the town attorney in writing prior to each examination of the records of any establishment. Such examination shall be for the purpose of administering and enforcing this article and transcripts may be made of any parts thereof or all of such records. Further, such inspections shall be made at reasonable times and without unreasonable interference with the business of such person.

(Code 1977, § 6-42)

**Sec. 54-303. Duty upon cessation of business.**

Whenever any person required to collect and remit to the town any tax imposed by this article shall cease to operate or otherwise dispose of his business, the tax shall become due and payable, and the person shall make to the town manager a report and remittance thereof within 30 days following which the business was terminated or disposition made thereof.

(Code 1977, § 6-43)

**Sec. 54-304. Advertising payment or absorption of tax prohibited.**

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of a tax imposed under this article will be paid or absorbed by the seller or by anyone else or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the tax.

(Code 1977, § 6-44)

**Sec. 54-305. Tips and service charges.**

Where a purchaser provides a tip for an employee of a seller, the tip is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case the full amount of the tip is turned over to the employee by the seller. Tips, gratuities and service charges on meals which are left on the table or where added to the bill and otherwise turned over in their entirety by the employer to the employee shall not be subject to this tax.

(Code 1977, § 6-45; Ord. of 7-1-1996)

**Sec. 54-306. Disposition of revenue.**

(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.

( b) A minimum of 5 percent shall be used for drainage or park and recreation-related projects, determined by council each year.

(Code 1977, § 6-49; Ord. of 10-19-2000)

# Town of Chincoteague, Inc.



TO: Chairman Savage and Members of the Committee  
FROM: Michael Tolbert, Town Manager  
DATE: August 8, 2022  
SUBJECT: Noise Ordinance

Recent questions as to the amount of noise allowed to emanate from different Island establishments have dictated a review of the current noise ordinance. The current ordinance which was first approved in 1999 is presented here for your reference. Also included is a chart indicating the noise restrictions for several other localities. Some are comparable to the Town in size and economy and some are larger in an effort to provide context.

The full ordinance for each locality was not presented here in the interest of space and clarity but is available for your review upon request.

Chief Fisher is here to answer any questions as to how the Town's ordinance is interpreted and enforced.

Decibel Level					Comments
Location	Residential		Commercial		
	Day	Night	Day	Night	
Town Of Chincoteague	65	55	70	60	Day = 7AM - 12AM Night = 12AM to 7AM
Accomack County	65	55	70	60	
Atlantic City, NJ	65	50	65	65	Same all day for commercial districts
Hanover County, VA	57	52	67	62	
Fairfax County, VA	60	55	65	65	Same all day for commercial districts
Colonial Beach Va	65	55	90	75	
Nags Head, NC	57	52	65	60	Allows 65 Res. and 80 Com. on weekends with a permit.
Ocean City MD.	-	-	75/70	65/60	South/North of 12th street on Boardwalk
- Dance Halls and Nightclubs	-	-	65	55	Taken at the adjoining property line
Rehoboth Beach DE	*	**	*	**	* Plainly audible standard ** Not audible beyond the property lines
St. Michaels, MD	65	55	67	62	
Virginia Beach, VA	65	55	none	none	Restaurants have exemptions for 80 day and 75 night
Savannah GA	60	50	65	65	
Myrtle Beach SC	55	50	65	60	
Hilton Head SC	60	55	67	62	Sliding scale depending on the frequency of the sound wave
Miami Beach, FL	NA	NA	NA	NA	Not based on a decibel scale. Mostly subjective using distances audible from the source. Allows a separate occurrence once per hour with fines escalating from \$250, \$1,000, \$2,000 \$3,000, \$5,000



**ARTICLE II. NOISE**

**Sec. 22-26. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*ANSI* means the American Standards Institute or its successor bodies.

*Daytime hours* means 7:00 a.m. to 12:00 a.m. midnight, local time.

*dB(A)* is the abbreviation for the sound level in decibels determined by the A-weighting network of a sound-level meter or by calculation from octave band or one-third octave band data.

*Decibel (dB)* means a unit of measure, on a logarithmic scale, or the ratio of a particular sound pressure squared to a standard reference pressure squared. For the purpose of this article, 20 micropascals shall be the standard reference pressure.

*Nighttime hours* means 12:00 a.m. midnight of one day through 7:00 a.m.

*Noise* means the intensity, frequency, duration and character of sound, including sound and vibration of subaudible frequencies.

*Person, firm or entity* means any individual, group of individuals, lessee, lessor, guest, licensee, firm, partnership, voluntary association or private or public corporation, specifically including any person in charge of or supervising any property owned or possessed by any such person, firm or entity.



# Town of Chincoteague, Inc.

*Sound level* means, in decibels, the weighted sound-pressure level measured by the use of a sound-level meter satisfying the requirements of ANSI SI.4, 1971, Specifications for Sound-Level Meters. The terms "sound level" and "noise level" are synonymous.

*Sound-level meter* means an instrument meeting ANSI SI.4, 1971, Specifications for Sound-Level Meters, comprising a microphone, an amplifier, an output meter and frequency weighting networks, that is used for the measurement of sound-pressure levels in a specified manner.

*Source* means any person or property, real or personal, contributing to noise.

(Code of 1977, § 12-10; Ord. of 6-21-2001)

**Cross reference**—Definitions generally, § 1-2.

## **Sec. 22-27. Authority.**

This article is adopted pursuant to the authority contained in the Charter, chapter 2, section 1(48), (49) and (5), and Code of Virginia, § 15.2-1102.

(Code 1977, § 12-22; Ord. of 5-15-1999)

## **Sec. 22-28. Exemptions for nonprofit organizations.**

This article shall not apply to any function or activity and the noise emanating therefrom conducted by any nonprofit organization which secures a permit from the town manager, who may issue such a permit if, in his reasonable discretion, the public health and safety will not be impaired by the function or activity.

(Ord. of 5-15-1999, § 12-14)

## **Sec. 22-29. Exemptions for governmental functions.**

# Town of Chincoteague, Inc.

This article shall not apply to the use of any machines or the noise emanating from the use thereof when operated or utilized by the town while performing municipal functions, such activities and noises being expressly exempted from this article.

(Ord. of 5-15-1999(1), § 12-15)

## **Sec. 22-30. Measurement of noises.**

(a) Wherever in this article any noise level is prohibited by or is to be determined by decibel level, the measurement of such emanating sound shall be conducted at the nearest corner of the main structure on the real estate owned, possessed, or being lawfully used by any affected party who makes complaint thereof. Such measurement shall be conducted at a height of at least three feet above ground and at least three feet from any reflecting surface. Any such prohibited decibel level will be exceeded when the sound level meter set for FAST response, using the A-weighting network, exceeds the specified level

*(Amended 02/19/04)*

(b) Measurement equipment shall be sound-level meters complying with ANSI SI.4, 1983, American National Standard Specifications for Sound-Level Meters, ANSI SI.4a-1985, and amendment to ANSI SI.4, or IEC 651-1979, "Sound Level Meters", of at least type 2 quality and sensitivity, comprising a microphone, amplifier, output meter and frequency weighting network. The meter operation shall be as prescribed by the equipment manufacturer, from time to time.

*(Amended 02/19/04)*

(c) Measurement equipment operators shall be officers of the police department who have been trained in the proper use of the sound-level meter by the equipment manufacturer. Representatives of the manufacturer may also train those department officers who are certified instructors, as designated by the Commonwealth Department of Criminal Justice Services, who may then train other officers within the department.

(Ord. of 5-15-1999(1), § 12-16)

## **Sec. 22-31. Cease and desist.**

# Town of Chincoteague, Inc.

No prosecution shall be initiated under this article unless and until there has been a complaint by any affected person, firm or entity, excepting noises emanating from publicly used and/or owned property and as described in Sec. 22-35(3)(b) and (4), and such violating person, firm or entity has been advised of the violation of this article and such person, firm or entity has failed to cease and desist such unlawful noise. For the purposes of this section, any such warning to any such violating person, firm or entity shall be continuous and sufficient for the 30-day period then following as to the same noise or the same type or similar or like noise, and no further warning shall be required during such period.

(Ord. of 5-15-1999(1), § 12-17) (*Amended 02/19/04*)

## **Sec. 22-32. Violation and penalties.**

Any violation of this article shall constitute a misdemeanor and shall be punishable by confinement in jail for a period not to exceed 12 months and/or a fine of not more than \$500.00. (Ord. of 5-15-1999(1), § 12-18)

## **Sec. 22-33. Injunctive relief.**

In addition to any criminal penalty for the violation of this article, the town manager is further authorized on behalf of the town to initiate and seek injunctive relief in the circuit court of the county to prohibit any such unlawful noises as provided for in this article.

(Ord. of 5-15-1999(1), § 12-19)

## **Sec. 22-34. Unreasonably loud noises prohibited.**

(a) It shall be unlawful for any person to make, continue or cause to be made any unreasonably loud noise or any noise which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the corporate limits.

(b) It shall be unlawful for any person, firm or entity to knowingly permit the making of any such unreasonably loud noise or any noise which annoys, disturbs, injures or endangers the comfort, health, peace or safety of others upon any premises owned, possessed or under the control of any such person, firm or entity within the corporate limits.

(Ord. of 5-15-1999(1), § 12-11)

## **Sec. 22-35. Certain prohibited noises enumerated.**

# Town of Chincoteague, Inc.

The following acts and/or noises are declared to create and/or constitute unreasonably loud noises prohibited by this article, and it is expressly provided that such enumeration shall not be exclusive, and the failure to enumerate a specific act and/or noise shall not be deemed to exclude any such act and/or noise from this article:

- (1) Generally, district levels. The making of any noise at a sound/noise level exceeding that level permitted in decibels in the applicable zoning district of the town within the specified period, measured as follows, excepting such noises as are either expressly regulated by other sections of this article or exempted:

<i>District</i>	<i>Daytime Level (dBA)</i>	<i>Nighttime Level (dBA)</i>
R-1	65	55
R-2	65	55
R-3	65	55

<i>District</i>	<i>Daytime Level (dBA)</i>	<i>Nighttime Level (dBA)</i>
	C-1 60	70
C-2	70	60

*(Amended 02-19-04)*

- (2) *Horns, signaling devices, etc.*
  - a. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any town street, way, avenue or alley, or other public place, except as a danger warning;
  - b. The creation by means of any such horn or signaling device of any unreasonably loud or harsh sound;

# Town of Chincoteague, Inc.

- c. The sounding of any such horn or signaling device for an unnecessary or unreasonable length of time;
- d. The use of any horn or signaling device operated by engine exhaust; and
- e. The use of any horn or signaling device when traffic is for any reason stopped and such horn or signaling device is not being reasonably utilized as a danger warning.

(3) *Radios, phonographs, musical instruments, loudspeakers, etc.*

- a. Use of, operation of or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound on private property that is above the permitted decibel level as measured in a zoning district as specified in this section.
- b. Use of, operation of or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing of sound on the public streets or other public ways in such a manner as is unreasonably loud so as to disturb the peace, quiet and comfort of other persons or at a louder volume than is necessary for the convenient hearing of the individual carrying the instrument, machine or device or those individuals immediately adjacent thereto and who are voluntary listeners thereto.
- c. Using, operating or permitting to be played, used or operated any radio, phonograph, loudspeaker, sound amplifier, or other machine or device for the

producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any location.

(4) *Yelling, shouting, hooting, whistling and singing.* Yelling, shouting, hooting, whistling, or singing on the public streets or public areas or from private property at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any

# Town of Chincoteague, Inc.

dwelling, motel, hotel, residence, business, or in the vicinity of any such noise.

- (5) *Operation of boats and other water vessels.* The operation of any boat or other water vessel with an outboard motor or with an inboard motor, unless equipped with an adequately muffled exhaust system. The use of any siren or other noise-producing or noise-amplifying instrument or mechanical device on a boat in such a manner as the peace and good order of the neighborhood is disturbed; provided, however, that nothing in this article shall be construed to prohibit the use of whistles, bells, or horns as signals as required by any state or federal law for the safe navigation of motorboats or vessels.
- (6) *Animals, birds, etc.* The maintaining of any animal or bird which, by causing frequent or long noise, shall disturb the comfort or repose of any person in the vicinity.
- (7) *Steam whistles.* The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper town authorities.
- (8) *Exhausts.* The discharge in the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (9) *Defect in vehicle or equipment.* The operation of any automobile, motorcycle or vehicle so out of repair, so equipped, or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- (10) *Loading or off-loading of vehicle or vessel.* The loading or off-loading of any vehicle or vessel creating loud and disturbing noise between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and between 6:00 p.m. and 7:00 a.m. on weekends, with the exception of the loading or off-loading of perishable products, and except when a permit is granted by the town manager, in a bona fide emergency to life or property, and the public health and safety will not be impaired by such work, as reasonably determined by the town manager.

# Town of Chincoteague, Inc.

(11) *Schools, courts, churches, hospitals, etc.* The creation of excessive noise on any street adjacent to any school, institution of learning, church, hospital, clinic, or public building, when such is in use, which unreasonably interferes with the workings of such institution or building, provided that conspicuous signs are displayed on such streets indicating that such is a school, church, hospital, clinic or other public building.

(12) *Hawkers, peddlers, etc.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(13) *Grasscutters, tillers or other similar mechanical devices.* The operation of any grasscutter, tiller or other similar mechanical device utilizing a gasoline or diesel powered engine creating an emanating sound plainly audible beyond the property line of the property at which the device is being utilized, except between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday, inclusive.

(Ord. of 5-15-1999(1), § 12-12)

## **Sec. 22-36. Construction noises.**

(a) The erection, excavation, demolition, alteration, or repair of any building or other improvement other than between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, inclusive, is prohibited, except when a permit is granted by the town manager, in a bona fide emergency to life or property, and the public health and safety will not be impaired by such work, as reasonably determined by the town manager.

(b) The making of any noises at a sound/noise level exceeding 89 decibels from any construction site, as measured as provided in this article, is prohibited at any time.

(Ord. of 5-15-1999(1), § 12-13)

# Town of Chincoteague, Inc.



TO: Chairman Savage and Members of the Committee  
FROM: Michael Tolbert, Town Manager  
DATE: August 11, 2022  
SUBJECT: Open Burning Regulations

During public comment at a Council meeting a few months ago, a citizen complained of the lack of local regulation concerning the burning of demolished materials located on a lot adjacent to her property. The burning operation was being conducted by the homeowner who was demolishing the existing home and using homemade furnaces to burn the materials. You will remember that at the time, the DEQ was contacted and declined to act on the complaint because there was no evidence of hazardous substances being burned. After some research of the Virginia Administrative Code, Mark has found the attached sections which deal almost exclusively with “Open Burning.”

I would stress that none of the sections attached here would have prevented the situation that prompted the citizen’s complaint due to the enclosed nature of the burning operation. However, if the committee is interested in pursuing a local ordinance regulating open burning, there is a model ordinance that is approved by the Virginia Pollution Control Board contained in this document.

My suggestion is that the Committee not act on this tonight and take some time to review this document and consider how it would alter any existing practices within the incorporated limits.



## 9VAC5-130-10. Applicability.

A. Except as provided in subsections C and D of this section, the provisions of this chapter apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices. Special incineration devices, including open pit incinerators, are exempt from permitting requirements according to the provisions of [9VAC5-80-1105](#) and such exemption applies throughout the Commonwealth of Virginia.

B. This part and Part II ([9VAC5-130-30](#) et seq.) of this chapter apply to volatile organic compounds emissions control areas (see [9VAC5-20-206](#)). This part and Parts III ([9VAC5-130-50](#) et seq.) and IV ([9VAC5-130-100](#) et seq.) of this chapter apply throughout the Commonwealth of Virginia.

C. This chapter does not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § [10.1-1308](#) of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality as required in Part IV of this chapter.

D. This chapter does not apply to air curtain incinerators subject to the provisions of (i) Article 45 ([9VAC5-40-6250](#) et seq.), Article 46 ([9VAC5-40-6550](#) et seq.), or Article 54 ([9VAC5-40-7950](#) et seq.) of [9VAC5-40](#) (Existing Stationary Sources) or (ii) Subparts Eb, AAAA or CCCC of 40 CFR Part 60.

## 9VAC5-130-30. Open burning prohibitions.

- A. No owner or other person shall cause or permit open burning of refuse or use of special incineration devices except as provided in [9VAC5-130-40](#).
- B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.
- C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.
- D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.
- E. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in [9VAC5-70](#) (Air Pollution Episode Prevention) or when deemed advisable by the board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in-process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

### **Statutory Authority**

§ [10.1-1308](#) of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

### **Historical Notes**

Derived from Virginia Register [Volume 25, Issue 12](#), eff. March 18, 2009; amended, Virginia Register [Volume 31, Issue 21](#), eff. July 15, 2015.

## 9VAC5-130-40. Permissible open burning.

A. Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through E of [9VAC5-130-30](#) are met:

1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard that constitutes a threat to the public health, safety or welfare and that cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:

a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. Hazardous waste permits may be required under the provisions of [9VAC20-60](#) (Virginia Hazardous Waste Management Regulations).

b. Destruction of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. Solid waste management permits may be required under the provisions of [9VAC20-81](#) (Solid Waste Management Regulations).

c. On-site destruction of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order to (i) suppress, control, or eradicate an infestation or pest; (ii) prevent or retard the spread of an infestation or pest; or (iii) prevent further disease transmission or progression.

2. Open burning is permitted for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. The designated official in charge of the training shall notify and obtain the approval of the regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for firefighting instruction are exempt from this notification requirement. Buildings that have not been demolished may be burned under the provisions of this subdivision only.

3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.

4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of [9VAC5-130-30](#) are not burned.

5. Open burning is permitted for the on-site destruction of leaves and tree, yard, and garden trimmings located on the premises of private property, provided that no regularly scheduled collection service for leaves and tree, yard, and garden trimmings is available at the adjacent street or public road.

6. Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled collection service for such refuse is available at the adjacent street or public road.

7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article 4, Emission Standards for Toxic Pollutants from Existing Sources (Rule 6-4), ([9VAC5-60-200](#) et seq.) and Article 5, Emission Standards for Toxic Pollutants from New and Modified Sources (Rule 6-5), ([9VAC5-60-300](#) et seq.) of Part II of Hazardous Air Pollutant Sources. Permits issued under [9VAC5-80](#) (Permits for Stationary Sources) may be used to satisfy the requirement for written approval. This activity must be consistent with the provisions of [9VAC20-60](#) (Virginia Hazardous Waste Management Regulations).

8. Open burning or the use of special incineration devices is permitted on site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited from May 1 through September 30.

9. Open burning is permitted for forest management, agricultural practices, and highway construction and maintenance programs approved by the board (see [9VAC5-130-50](#)), provided the following conditions are met:

- a. The burning shall be at least 1,000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and
- b. The burning shall be attended at all times.

10. Open burning or the use of special incineration devices is permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited May 1 through September 30.

B. Open burning or the use of special incineration devices permitted under the provisions of this chapter does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this chapter. In this regard special attention should be directed to § [10.1-1142](#) of the Code of Virginia, which is enforced by the Department of Forestry.

C. With regard to the provisions of subsection B of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No destruction of waste by open burning or transportation of waste to be destroyed by open burning shall take place in violation of the regulations of the Virginia Waste Management Board.

#### **Statutory Authority**

§ [10.1-1308](#) of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

#### **Historical Notes**

Derived from Virginia Register [Volume 25, Issue 12](#), eff. March 18, 2009; amended, Virginia Register [Volume 27, Issue 23](#), eff. August 17, 2011; [Volume 31, Issue 21](#), eff. July 15, 2015.

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

As a service to the public, the Virginia Administrative Code is provided online by the Virginia General Assembly. We are unable to answer legal questions or respond to requests for legal advice, including application of law to specific fact. To understand and protect your legal rights, you should consult an attorney.

9VAC5-130-100. Local ordinances on open burning.

A. General.

1. If the governing body of any locality wishes to adopt an ordinance relating to air pollution and governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § [10.1-1321](#) B of the Code of Virginia).
2. In order to assist local governments in a VOC control area with the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model. For local governments located outside of a VOC control area, an ordinance must contain, at a minimum, the provisions in the title, purpose, definitions, and exemptions sections of the model ordinance in subsection C of this section.
3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.
4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.
5. Local ordinances that have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

B. Establishment and approval of local ordinances varying from the model.

1. Any local governing body proposing to adopt or amend an ordinance relating to open burning that differs from the model local ordinance in subsection C of this section shall first obtain the approval of the board for the ordinance or amendment as specified in subdivision A 4 of this section. The board in approving local ordinances will consider, but will not be limited to, the following criteria:
  - a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.
  - b. Adequate local resources will be committed to enforcing the proposed local ordinance.
  - c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § [10.1-1308](#) of the Virginia Air Pollution Control Law.
2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.
3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.
4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances that have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:
- a. A public hearing is held prior to granting the variance;
  - b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and
  - c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.
6. [9VAC5-170-150](#) shall not apply to local ordinances concerned solely with open burning.

### C. Model ordinance.

This ordinance shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

The purpose of this ordinance is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This ordinance is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

For the purpose of this ordinance and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meanings given them in this section.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this ordinance and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial

logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

"Construction waste" means solid waste that is produced or generated during construction remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in [9VAC20-60](#) (Virginia Hazardous Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See [9VAC20-81](#) (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:



1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See [9VAC20-81](#) (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.
2. Construction, renovation, or demolition wastes.
3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of

maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § [10.1-1142](#) of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in [9VAC5-70](#) (Air Pollution Episode Prevention) or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management, agricultural practices, and highway construction and maintenance programs approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

A. Open burning is permitted on site for the destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the following conditions are met:

1. The burning takes place on the premises of the private property; (and)
2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted (; and
3. No regularly scheduled collection service for such trimmings is available at the adjacent street or public road).

B. Open burning is permitted on site for the destruction of household waste by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;
2. Animal carcasses or animal wastes are not burned;
3. Garbage is not burned; (and)
4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted (; and
5. No regularly scheduled collection service for such refuse is available at the adjacent street or public road).

C. Open burning is permitted on site for destruction of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations that may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);
2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;
4. The burning shall be conducted at the greatest distance practicable from highways and air fields;
5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;

6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for destruction of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas, provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill that meets the provisions of the regulations of the Virginia Waste Management Board;

2. The burning shall be attended at all times;

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning waste, clean burning debris waste, or clean burning demolition waste;

4. All reasonable effort shall be made to minimize the amount of material that is burned;

5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

(E. Sections 000-6 A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device May 1 through September 30.)

A. When open burning of debris waste (Section 000-6 C) or open burning of debris on the site of a local landfill (Section 000-6 D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions that are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met that are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.
2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.
3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.
4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.
5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.
6. The use of special incineration devices shall be allowed only for the destruction of debris waste, clean burning construction waste, and clean burning demolition waste.
7. Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by (designated local official).

(C. An application for a permit under Section 000-7 A or 000-7 B shall be accompanied by a processing fee of \$\_\_\_\_.<sup>2</sup>)

A. Any violation of this ordinance is punishable as a Class 1 misdemeanor. (See § [15.2-1429](#) of the Code of Virginia.)

B. Each separate incident may be considered a new violation.

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<sup>1</sup>This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.

<sup>2</sup>The fee stipulation in this section is optional at the discretion of the jurisdiction.

#### **Statutory Authority**

§ [10.1-1308](#) of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

#### **Historical Notes**

Derived from Virginia Register [Volume 25, Issue 12](#), eff. March 18, 2009; amended, Virginia Register [Volume 27, Issue 23](#), eff. August 17, 2011; [Volume 31, Issue 21](#), eff. July 15, 2015.