

**MINUTES OF THE JANUARY 3, 2023
CHINCOTEAGUE TOWN COUNCIL MEETING
Council Chambers**

Council Members Present:

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

Council Members Absent:

Staff Present:

Mr. Michael T. Tolbert, Town Manager
Mr. Robby Fisher, Chief of Police
Mr. Wes Parks, Public Works Director
Mr. E. Bryan Rush, Director of Emergency Services

Call to Order

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

Invocation

Councilman Taylor offered the invocation.

Pledge of Allegiance

Mayor Leonard led in the Pledge of Allegiance.

Public Comment

Mayor Leonard opened the floor for public comment. There was none.

Election of Vice Mayor

Mayor Leonard explained that traditionally the top vote recipient is voted as Vice Mayor. He opened the floor for the nomination of the Vice Mayor.

Councilman Taylor motioned, seconded by Councilman Savage to reelect Councilman Bott as Vice Mayor. Unanimously approved.

District 1 Supervisor Report

Supervisor Tarr reported that they have been preparing for the upcoming budget. He also advised the Supervisors voted to relieve the taxes for 1 vehicle of each active volunteer fireman in the county. This went into effect January 1st. He advised it will be up to the chief of each station to report the active firemen, meeting the criteria, and their vehicle information. This is an incentive to recruit more volunteers. He reported on ARPA funds for marketing advising that the Chincoteague Chamber received \$80,000 of the \$162,000. The Eastern Shore Public Library is anticipated to be completed in April. They are trying to complete the Broadband internet service

to the remaining 16% of the areas that do not have internet as of yet. Supervisor Tarr also stated they are trying to increase housing on the shore and to increase teachers' salaries. They are conducting a revitalization plan in the county and gave a grant to Whitesville to clean up the area. They have a committee overseeing this. He reported on the new 911 system that has been approved and will take up to 2 years for completion.

Councilwoman Bowden asked about the tax relief to the firemen.

Supervisor Tarr explained how it would work. He also commented that this was the best carnival season in 97 years.

Council thanked Supervisor Tarr.

Staff Reports

General Government

Town Manager Tolbert gave an update on the funding for the new wells, which didn't play out for this year. This will be revisited again in the next State budget with an updated estimate. He reported on the Center rentals and events and the Memorial Park Boat Ramp Project. He reviewed the monthly Financial Report, tax collections and Building and Zoning.

Police Department

Chief Fisher advised they held a senior luncheon in December, assisted with traffic control during the Christmas Parade. He advised the Toy Ride was a washout but some came anyway in their cars and had a great time. He expressed his appreciation for the community donations of toys. He reported they shopped for the toys on December 14th, and on the 19th the parents came to collect wish list items for their children. He feels they collected the most this year. They helped 20 families and 43 children, they were still able to donate to the Atlantic Volunteer Fire Department the remaining uncollected toys. He also reported on training for Investigator Barnes.

Public Works Department

Public Works Director Parks commended the staff for all the service repairs during the Christmas weekend freeze, adding they had about 23 hours working on emergency calls. He reported they poured concrete and installed chess tables at Brianna's Park. He advised that the weather event took a toll on the Christmas decorations, they were able to get them back upright and on. He reported on the purchase of a 2019 backhoe. He advised that in January they will be conducting routine maintenance and removing Christmas decorations along with renovating the Council Chambers/EOC.

Mayor Leonard advised of a couple of roads that needed grading/scraping.

Councilwoman Bowden feels they need to start replacing the Christmas decorations.

Emergency Services

Director of Emergency Services Rush reported on the calls for the month and year. They ran 1,069 calls in 2022, which was 45 more than in 2021. He gave the stats for the nature and age groups of calls. They are still watching the COVID wave. He reported on the grant that was

awarded for the EOC. The rescheduled Rocket Lab launch is still unknown and ANTARES will have another launch March 7th. He reminded everyone that now is the time to prepare in case power is out for an extended amount of time, winds, flooding, etc. He gave a list of items to help better prepare. Director of Emergency Services Rush reviewed the COVID stats for December, the year, and from the beginning.

There was discussion about the new variant and symptoms.

Committee Reports:

Public Works Committee

Councilwoman Richardson advised they met on December 6th. They reviewed the Cropper Street Project, the Spring Paving Project, and South Main Street Draining and Paving. She stated that Public Works Director Parks reworked the figures on the Cropper Street Project. She further explained the funding of this project.

There was brief discussion about the delay in materials for the Cropper Street Project, and notification to customers of the project.

Adoption of the Minutes of the December 5th, 2022, Council Meeting

Councilman McComb motioned, seconded by Councilwoman Bowden to adopt the minutes of the December 5th, 2022, Council meeting as presented. Unanimously approved.

Announcement of the 2022 Christmas Decoration Winners

Mayor Leonard reported there were 2 categories for the judging of the Christmas decorated homes.

Most Festive:

1st Place: Mr. & Mrs. Bill Birch
7079 Bunting Road
2nd Place: Mr. & Mrs. Jakie Cherrix
6520 Church Street

Traditional:

1st Place: Mr. & Mrs. Delmas Mears
4389 Chicken City Road
2nd Place: Ms. Jean Jester & Mr. David Taylor
4147 Ridge Road

Consider Reappointment of Committee and Commission Members

Mayor Leonard advised that Mr. Danny Bowden's term on the Harbor Committee has expired as of December 31, 2022.

Councilman McComb motioned seconded by Councilwoman Bowden to reappoint Mr. Bowden to the Harbor Committee for another 2-year term. Unanimously approved.

Mayor Leonard also advised that Mr. Michael McGee's term on the Board of Zoning Appeals expired December 31st, 2022, as well. The members of the BZA are appointed by the Circuit Court for a term of 5 years.

Councilman Savage motioned, seconded by Councilwoman Bowden to recommend that Mr. McGee serve another term on the BZA. Unanimously approved.

Consider Revised Bamboo Ordinance

Town Manager Tolbert reviewed the changes to the Town's Bamboo Ordinance advising that they removed a section that was difficult to understand and added penalties and verbiage from the State's Bamboo Ordinance. The Ordinance Committee reviewed the proposed ordinance and accepted the changes.

Councilman Savage motioned, seconded by Councilwoman Bowden to approve the proposed Bamboo Ordinance as presented. Unanimously approved.

Sec. 66-56. Nuisance declared.

It is the finding of the Town of Chincoteague that the planting of growing of running bamboo, and certain other species, has been and will continue to be destructive to the natural environment and destructive to properties adjoining and neighboring those properties where running bamboo has been planted or permitted to grow; and because of these effects, the planting or growing of running bamboo and other invasive species threatens the value and physical integrity of both public and private property in the Town of Chincoteague. Therefore, in order to protect and preserve said environment and property values, it is the intent of the Town of Chincoteague to regulate the planting or growing of running bamboo and other invasive species with the Town of Chincoteague.

Sec. 66-57. Definitions.

Running bamboo means the plant genera Phyllostachys. Other invasive species are further defined in the list compiled by the Virginia Department of Conservation and Recreation (DCR): <https://www.dcr.virginia.gov/natural-heritage/invsppdflist>

Sec. 66-58. Duty to contain running bamboo and other invasive species

- A. ~~Except as provided in subsection C of this section,~~ A landowner on whose property running bamboo or invasive species grows shall not allow the running bamboo or invasive species to spread from his property to any adjoining property not owned by the landowner or within ten feet of a public right of way or a public roadway.
- B. A landowner on whose property running bamboo or invasive species grows shall install or implement an appropriate containment measure effective at preventing such running bamboo or invasive species from spreading from his property onto an adjoining property not owned by the landowner or within ten feet of a public right of way or public roadway.
- C. ~~A landowner on whose property running bamboo or invasive species has spread from an adjoining property shall not be required to install or implement a containment measure to prevent the spread of this running bamboo if he:~~
 - 1. ~~Did not plant the running bamboo or invasive species or cause the running bamboo or invasive species to be planted or grown on his property;~~
 - 2. ~~Has provided satisfactory proof to the Town of Chincoteague that, within a reasonable period of time after (i) discovering the spread of the plant onto his property from an adjoining property or (ii) purchasing property on which the plant had spread from an adjoining property, he advised the owner of the adjoining property of his objection to the spread of the running bamboo or invasive species; and~~

~~3. Has initiated steps for the removal of the running bamboo or invasive species from his property, including remedies at law.~~

Sec. 66-59. Containment measures.

- A. An appropriate containment measure is any measure that prevents the plant from spreading to adjoining property or within ten feet of public right of way or public roadway.
- B. A barrier used as a containment measure shall be:
 - 1. Impenetrable to the plant or its root system; and
 - 2. Installed at a sufficient depth within the property where the running bamboo or invasive species is planted or growing to prevent the growth of the running bamboo or invasive species on or the encroachment of the running bamboo or invasive species upon adjoining property or within ten feet of a public right of way or public roadway.
- C. A trench used as a containment measure shall be a sufficient depth within the property where the plant is planted or growing to prevent the growth of the plant on or the encroachment of the plant upon adjoining property or within ten feet of a public right of way or public roadway.

Sec. 66-60. Penalties.

~~Any person who fails or refuses to comply with this article shall be deemed guilty of a class 4 misdemeanor.~~

- A. A violation of a running bamboo ordinance authorized by this section shall be subject to a civil penalty, not to exceed \$50 for the first violation or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed \$200. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000 in a 12-month period.
- B. No violation of a running bamboo ordinance arising from the same set of operative facts shall be subject to a civil penalty under both (i) an ordinance adopted pursuant to this section and (ii) an ordinance adopted pursuant to § 15.2-901 of the code of Virginia.

Review of the FY24 Trolley Budget and Grant Submission

Town Manager Tolbert reviewed the FY24 Trolley Budget and Grant. He advised that once approved he can complete the grant application.

Trolley Detailed Budget

ACCOUNT	REVENUE	FY24 Proposal	FY 23	FY 22 Actual
704501.0100	TROLLEY GRANTS (Operations)	\$68,913	\$65,918	\$66,937
704501.0110	PROGRAM INCOME	\$4,000	\$4,000	\$1,724
704501.0200	RTAP REIMBURSEMENTS	\$0	\$0	\$0
704501.0300	MISC. NONPROGRAM INCOME	\$0	\$0	\$0
704501.8900	TRANSFER FROM GEN. FUND	\$28,148	\$26,924	\$23,784
	SUB TOTAL	\$101,061	\$96,842	\$92,445
	CAPITAL GRANTS			
704501.0100	- Federal Capital Grant (New Trolley)	\$132,400	\$0	\$0
704501.0100	- State Capital Grant (New Trolley)	\$26,480	\$0	\$0
704501.0100	- Transfer from Trolley Capital Account (New Trolley)	\$0	\$0	\$0
	EXPENDITURES			
	SALARIES			
703010.0100	SALARIES	\$49,980	\$49,180	\$28,796
	SUB TOTAL	\$49,980	\$49,180	\$28,796
	BENEFITS			
703010.2001	SOCIAL SECURITY	\$3,831	\$3,762	\$2,199
	SUB TOTAL	\$3,831	\$3,762	\$2,199
	OPERATIONAL EXPENSES			
703030.3401	INSURANCE & BONDING	\$3,400	\$3,400	\$3,152
703030.4400	COMMUNICATION SERVICES	\$500	\$800	\$331
703030.4401	PRINTING & REPRODUCTION	\$3,000	\$2,600	\$2,959
703030.4402	ADVERTISING & PROMOTION	\$1,200	\$1,000	\$1,153
703030.4403	EDUCATION & TRAINING	\$1,000	\$1,200	\$80
703030.4404	CLEANING SUPPLIES	\$300	\$400	\$0
703030.4406	SUPPLIES & MATERIALS	\$500	\$500	\$149
703030.4407	MEMBERSHIPS & DUES	\$250	\$250	\$250
703030.4408	TRAVEL & MEALS	\$1,000	\$500	\$1,000
703030.4701	FUEL & LUBRICANTS	\$8,000	\$7,000	\$4,747
703030.4702	TIRES & TUBES	\$3,000	\$1,200	\$600
703030.4703	UNIFORMS	\$1,000	\$1,400	\$200
703030.4704	PARTS	\$750	\$750	\$768
703030.5201	DRUG TESTING/BACKGROUND CHECKS	\$750	\$1,400	\$565
703030.6100	RTAP EXPENSES	\$0	\$0	\$0
703030.7302	REPAIRS/MAINT	\$6,500	\$6,500	\$6,980
703030.8505	RENT TO GENERAL FUND	\$16,000	\$15,000	\$15,000
	SUB TOTAL	\$47,150	\$43,900	\$37,934
	Total Operating	\$100,961	\$96,842	\$68,929
	CAPITAL EXPENSE			
703090.9001	NEW TROLLEY	\$148,626		\$0
	TRANSFER TO TROLLEY CAPITAL ACCT.	\$10,254		
703090.91	CAPITAL EXPENSE	\$0		\$0
	Total Capital	\$158,880	\$0	\$0
	Total Trolley Budget	\$259,841	\$96,842	\$68,929

Trolley Salaries

	Employee	Hourly Rate	FY23 Hours	FY 23 Proposed Salaries	Equivqlent Annual Salary	FICA
TROLLEY	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DIRECTOR	\$680.00	26	\$17,680.00	\$17,680.00	\$1,352.52
		Total Salaries Trolley			\$49,180.00	
	Bonus			\$800.00		\$61.20
	Total Salaries and Bonus			\$49,980.00		\$3,823.47

Trolley Grants

FY 22	FY 23	FY24	
\$33,602.50	\$46,421.14	\$48,530.50	Fed Grant
\$14,113.05	\$19,496.88	\$20,382.81	State (DRPT) Grant
\$19,489.45	\$26,924.26	\$28,147.69	Town Match
\$47,715.55	\$65,918.01	\$68,913.31	Federal & State Grant Combined
\$67,205.00	\$92,842.27	\$97,061.00	Total Non-Fare Revenue
\$71,205.00	\$96,842.27	\$101,061.00	Total Revenue
\$165,500.00			New Trolley Cost
\$132,400.00			Fed Grant @ 80%
\$26,480.00			State Grant @ 16%
\$6,620.00			Town Match @ 4%

Councilman McComb motioned, seconded by Councilwoman Bowden to approve the FY24 Trolley Budget and Grant Submission. Unanimously approved.

Resolution to Accept Donation

Town Manager Tolbert gave a review explaining how the donation of the sewage treatment plant began, with countless hours of research, inspections, meetings, drafts, reviews, negotiations, and finally completing the transaction on December 30, 2022.

Mayor Leonard stated that they have had a lot of meetings on this. They didn't see all the work that went into this, countless hours, dealing with attorneys and engineers, and other entities. He thanked Town Manager Tolbert for carrying this.

Councilwoman Bowden motioned, seconded by Councilman McComb to accept the donation of the sewage treatment plant. Unanimously approved.

**RESOLUTION
AUTHORIZING AND RATIFYING THE ACCEPTANCE OF REAL ESTATE
DONATION
FOR TAX MAP # 30A3-A-6A (WASTEWATER TREATMENT PLANT)
FROM CHINCOTEAGUE SUNSETS, L.L.C. AND RELATED TRANSACTIONS
Date: January 3, 2023**

WHEREAS, Chincoteague Sunsets, L.L.C. (the "Landowner"), desires to donate to the Town of Chincoteague (the "Town") a parcel of improved land containing approximately 0.13 acres, identified as Tax Map Number 30A3-A-6A, on which is located a wastewater treatment plant (collectively the "Existing Plant"), as further described in the Deed of Gift attached hereto as **Exhibit A** and incorporated herein ("Deed of Gift") and the Real Property Donation Agreement attached hereto as **Exhibit B** and incorporated herein ("Donation Agreement");

WHEREAS, the donation of the Existing Plant is the first in a series of transactions pursuant to which the Town will acquire the Existing Plant and other land, easements, and property interests in or related to the Sunset Bay South Condominium (together with the Existing Plant, collectively the "Acquired Property"), located within the Town, for the purpose of providing wastewater treatment service to the condominium and other users located within the Town;

WHEREAS, the foregoing transactions are described in the Agreement between and among the Town, Sunset Bay South Condominium Association, Inc., Sunset Bay, LLC, Sunset Bay Utilities, Inc., and Chincoteague Sunsets, L.L.C., a copy of which is attached hereto as **Exhibit C** and incorporated herein (the "Master Agreement");

WHEREAS, as provided in the Master Agreement, the Town intends to convey the Acquired Property to Hampton Roads Sanitation District (“HRSD”) so that HRSD will assume operation and control of the Existing Plant and potentially construct a new treatment plant, all pursuant to a Sewer Treatment Plant Sewer Transfer and Service Agreement, a draft of which is attached hereto as **Exhibit D** and incorporated herein (the “HRSD Transfer Agreement” and, together with other agreements, documents, certificates, affidavits, and instruments related thereto, collectively (collectively the “HRSD Documents”));

WHEREAS, as provided in the Master Agreement, upon receipt of the Existing Plant the Town will lease the Existing Plant to Sunset Bay Utilities, Inc. (“SBU”), which operates the Existing Plant, so that SBU may continue to operate the Existing Plant until the transfer to HRSD can be completed or until December 29, 2023, whichever occurs first;

WHEREAS, the terms of such lease and operation arrangement are set forth in a Lease and Operation Agreement between the Town and SBU, a copy of which is attached hereto as **Exhibit E** and incorporated herein (the “Lease and Operation Agreement”);

WHEREAS, the Town Council has determined that (i) the acceptance of the Existing Plant, (ii) the acquisition of the other Acquired Property, and (iii) the implementation of the transactions described in the Master Agreement, the Lease and Operation Agreement, and the HRSD Documents would benefit the inhabitants of the Town by improving wastewater treatment service within the Town;

WHEREAS, Va. Code Ann. §§ 15.2-1800 and 15.2-1803, as amended, require that a qualified attorney-at-law selected by the Town Council approve the form of the deed conveying property to the Town; and

WHEREAS, the Town Council selects Michael L. Sterling, Esq. of the law firm Woods Rogers Vandeventer Black PLC, a qualified attorney-at-law, to perform said act on behalf of the Town, and Mr. Sterling has agreed to perform such act.

IT IS NOW, THEREFORE, RESOLVED that, in response to the Landowner's written request for the proposed donation of the Existing Plant to the Town and furtherance of the foregoing recitals, the Town Council hereby:

1. Selects and authorizes Michael L. Sterling, Esq. of the law firm Woods Rogers Vandeventer Black PLC, a qualified attorney-at-law, to approve the form of the Deed of Gift and to execute the Deed of Gift for such purpose;
2. Authorizes the Mayor, J. Arthur Leonard, to accept the Existing Plant on behalf of the Town and to execute the Deed of Gift and the Donation Agreement for such purpose;
3. Authorizes the Town Manager, Michael T. Tolbert, to execute the Lease and Operation Agreement on behalf of the Town;
4. Authorizes the Town Manager to execute the Master Agreement on behalf of the Town;
5. Authorizes the Town Manager and the Mayor, either of whom may act, to negotiate, finalize, and execute the HRSD Transfer Agreement on terms substantially consistent with the Master Agreement and the recitals and resolutions set forth above;
6. Authorizes the Town Manager and the Mayor, either of whom may act, to prepare, negotiate, finalize, and execute the other HRSD Documents and such other agreements, documents, certificates, affidavits, and instruments on behalf of the Town as they may deem necessary or proper in furtherance of the transactions described in the Master

Agreement and the recitals and resolutions set forth above, on terms substantially consistent therewith; and

7. Ratifies the actions taken previously by the Town Manager and the Mayor in furtherance of the recitals and resolutions set forth above, including without limitation execution of the Deed of Gift, the Donation Agreement, the Master Agreement, and the Lease and Operation Agreement.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

SIGNATURE PAGE TO
RESOLUTION AUTHORIZING AND RATIFYING THE ACCEPTANCE OF REAL
ESTATE DONATION FOR TAX MAP # 30A3-A-6A (WASTEWATER TREATMENT
PLANT)
FROM CHINCOTEAGUE SUNSETS, L.L.C. AND RELATED TRANSACTIONS

Adopted January 3, 2023

Date

J. Arthur Leonard, Town Mayor

Attest -----

Michael T. Tolbert, Town Manager

EXHIBIT A
Deed of Gift
[See attached.]

EXHIBIT B
Real Property Donation Agreement
[See attached.]

EXHIBIT C
Master Agreement
[See attached.]

EXHIBIT D
HRSD Transfer Agreement
[See attached.]

EXHIBIT E
Lease and Operation Agreement
[See attached.]

4857-2599-1239, v. 1

Mayor and Council Comments

Councilman Savage commented that time, patience and perseverance will accomplish all things. He expressed his appreciation for all the hard work Town Manager Tolbert has done on this. He also thanked the Chincoteague citizens for their support and electing him to Council.

Councilman Taylor stated that 2022 is in the books and he enjoys working with everyone. He added that they get things done. He commented on Brianna's Park and added that when it comes to the kids they need to step up.

Vice Mayor Bott formally recognized Mrs. Joyce Wessells who recently passed away. He advised she worked for him for quite a while and was an incredible and very impressive lady. He also commended Town Manager Tolbert for his hard work on the sewage treatment plant negotiations, he added that it was quite impressive.

Councilwoman Bowden stated that Mrs. Joyce Wessells was the nicest and sweetest person. She always made you feel loved. She expressed her heartfelt sympathy to her family. She also thanked Town Manager Tolbert for all his hard work. She hoped everyone had a good Christmas and New Year. She wanted to get the new year started off right and get it done for the Town.

Councilwoman Richardson thanked the Chincoteague people for voting for her for another 4-year term. She stated that it is a pleasure to serve. She advised that she has been working on sewage for a long time. She thanked Town Manager Tolbert for his work on the sewage treatment plant and it wouldn't have been done without his perseverance and knowledge. She thanked all involved.

Mayor Leonard Stated that they're all present and together and will see what 2023 has in store. He thanked the Town employees for keeping the lights on and water flowing over Christmas. He concluded with "Roll Tide".

Adjourn

Councilwoman Bowden motioned, seconded by Councilman McComb, and others to adjourn. Unanimously approved.

J. Arthur Leonard, Mayor

Michael T. Tolbert, Town Manager

**MINUTES OF THE JANUARY 19, 2023
CHINCOTEAGUE TOWN COUNCIL MEETING
Council Chambers**

Council Members Present:

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

Council Members Absent:

Staff Present:

Mr. Michael T. Tolbert, Town Manager
Mr. Bryan Rush, Director of Emergency Services

Call to Order

Mayor Leonard called the meeting to order at 6:00 p.m.

Invocation

Councilman Savage offered the invocation.

Pledge of Allegiance

Mayor Leonard led in the Pledge of Allegiance.

Public Comment

There was none.

Agenda Adoption

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

Proclamation of State Pony

Town Manager Tolbert read the Proclamation.

Mayor Leonard stated that he was advised by the Governor to state that as soon as they send it to Richmond, they will sign it as soon as it is received.



PROCLAMATION PROPOSING TO ADOPT A STATE PONY

WHEREAS, The Chincoteague Pony has lived and thrived on the Islands of Chincoteague and Assateague, Virginia since the 17th century where they have not only survived but thrived and multiplied, and

WHEREAS, The Chincoteague Pony, due to its heartiness and through the efforts of authors, filmmakers and the Chincoteague Volunteer Fire Company, is known not only in the State of Virginia and the United States but throughout the world to adults and children alike, and

WHEREAS, The Chincoteague Ponies are rounded up each year by the Chincoteague Volunteer Fire Company, where the ponies swim the channel between Assateague and Chincoteague Islands to the thrill of thousands of onlookers, and

WHEREAS, The annual Pony Penning and Round Up is now the oldest known annual roundup in the Country and the Pony Swim an event revered for its uniqueness, consistency, and historical tradition, and

WHEREAS, The Chincoteague Ponies through this notoriety are responsible for providing considerable recognition and likewise attract significant tourism to the Eastern Shore and the State of Virginia, and

WHEREAS, The Chincoteague Pony In 1994, due to its rare DNA was designated a unique breed of pony where upon hundreds of owners now proudly claim ownership of these exceptional animals,

NOW THEREFORE BE IT RESOLVED THAT, The Council of the Town of Chincoteague respectfully proposes to the Virginia General Assembly that the animal known and recognized throughout the world as the Chincoteague Pony, be distinguished by this historic body with the title of Official Pony of the Commonwealth of Virginia.

Adopted this 19th day of January, 2023

Members of Council:

Signed: _____
John A. Leonard
Mayor

Christopher D. Bott, _____

Ellen Richardson, _____

Denise P. Bowden, _____

Gene W. Taylor, _____

William T. McComb, _____

K. Jay Savage, _____

Councilman Savage motioned, seconded by Councilman McComb to adopt the Proclamation of the State Pony. Unanimously approved.

Public Hearing – Boundary Line Vacation

Mayor Leonard advised that this is the public hearing for the vacation of lot lines on South Main Street for Greg and Debbie Christman.

This is 3 lots to be made into 2 lots. There is 1 septic system to be used by both lots.

Councilman Taylor motioned, seconded by Councilwoman Richardson to approve the boundary lines vacation as presented. Unanimously approved.

FY24 Budget Review – General Government, Police Department, and Emergency Medical Services

Town Manager Tolbert reviewed the proposed FY24 Budget for General Government, Police Department and Emergency Medical Services. He explained the salaries, revenues, grants, etc. There was further discussion about EMS staffing and funding.

Councilman Taylor suggested using the Cigarette Tax and possibly the Public Safety Funds for the EMS additional staff funding.

Mayor and Council Comments

Councilwoman Bowden commented on revenue streams and agrees with the suggestions of using the Cigarette Tax. She feels they need to look into the income further.

Closed Meeting in Accordance with §2.2-3711 (A) (1) of the Code of Virginia to discuss specific personnel matters.

Councilwoman Bowden motioned, seconded by McComb to go into a closed meeting in accordance with §2.2-3711 (A) (1) of the Code of Virginia to discuss perspective business opportunities and personnel matters. All present were in favor and the motion was carried.

Ayes: Bott, Bowden, McComb, Richardson, Savage, Taylor

Nays: None

Absent: None

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

(1) only public business matters lawfully exempted from opening meeting requirements under this chapter and only such public business matters were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered. All present were in favor and the motion was carried.

Ayes: Bott, Bowden, McComb, Richardson, Savage, Taylor

Nays: None

Absent: None

Adjourn

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

J. Arthur Leonard, Mayor

Michael T. Tolbert, Town Manager

MINUTES OF THE FEBRUARY 06, 2023
CHINCOTEAGUE TOWN COUNCIL MEETING
Council Chambers

Council Members Present:

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

Council Members Absent:

Staff Present:

Mr. Michael T. Tolbert, Town Manager
Mr. Robby Fisher, Chief of Police
Mr. Wes Parks, Public Works Director
Mr. E. Bryan Rush, Director of Emergency Services

Call to Order

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

Invocation

Councilman Taylor offered the invocation.

Pledge of Allegiance

Mayor Leonard led in the Pledge of Allegiance.

Special Presentation

Mayor Leonard read and presented a Certificate of Recognition to Mr. Carlton “Cork” McGee in honor of his 92nd birthday on February 11th, 2023.



CERTIFICATE OF RECOGNITION

PRESENTED TO

Mr. Carlton (Cork) McGee

WHEREAS, Mr. McGee will be honored by relatives and friends on the occasion of his 92nd birthday; and

WHEREAS, Mr. McGee was born on February 11, 1931, and has been a lifelong and valued member of this Chincoteague community; and

WHEREAS, Mr. McGee married Lola Mae Daisey and had 3 children, 5 grandchildren, 6 great grandchildren and 3 great- great grandchildren; and

WHEREAS, Mr. McGee is a faithful and devout Christian hardly ever missing a Sunday at his beloved Church by the Beach; and

WHEREAS, during a long and productive lifetime as a true and proud islander, he has worked as a waterman, hunting guide, (duck trapper, but never caught nor admitted to) and is still a well-known decoy carver. Through his caring and gentle spirit, he has made countless friends that remain in touch no matter the miles between them.

NOW, THEREFORE, by virtue of the authority vested in me as Mayor of the Town of Chincoteague, I do hereby deem it an honor and pleasure to extend this tribute to Mr. Carlton (Cork) McGee on the occasion of his 92nd birthday, with sincere congratulations and best wishes for many more happy and productive years.

DATED this 6th day of February 2023 .

Mayor John A. Leonard

Attest:

Michael T. Tolbert, Town Manager

Public Comment

Mayor Leonard opened the floor for public comment.

- Mrs. Brittany Adams, Adams' Auto Repair, 5006 Deep Hole Road, approached Council regarding the Town utilizing local businesses for services, materials, etc. She gave the history of how her husband, Mr. Roger Adams, started and building his business to what it is today. She expressed how disheartening it is that the Town staff would go off the Island for vehicle repairs, and purchases when the local businesses deserve the opportunity. She asked what Adams' Auto Repair needs to do to get the business from the Town.

Agenda Adoption

Councilwoman Bowden motioned, seconded by Councilwoman Richardson to adopt the agenda as presented. Unanimously approved.

Staff Reports

General Government

Town Manager Tolbert gave an update on the rentals for the Center and upgrades to the Center's HVAC system. He reviewed the financial report, and the Building and Zoning report for the month of January. He reported that the auditors completed the annual review. The early reporting was typical housekeeping items but they felt the Town was in good shape. He advised that he and Harbormaster Merritt will be traveling to Norfolk tomorrow to present the FY24 Project to the VPA. He reported on the IWork Solutions software for the online building permit system.

Councilwoman Bowden asked if there are any suitable candidates for the Center Director position.

Town Manager Tolbert advised he has about 6 candidates plus a couple of resumes from Chamber Director Shotwell.

Councilwoman Bowden asked how far the floating dock would go out into the channel.

Town Manager Tolbert advised it is 80' which is less than the fishing pier.

Councilwoman Bowden also asked if the average citizen could utilize the new building permit software, IWork.

Town Manager Tolbert advised they should as it is like filling out a building permit with autofill making it a little easier.

Mayor Leonard stated that because the new pier will stick out in the channel more than what is there, he asked if they planned for lighting on the floating pier.

Town Manager Tolbert advised they could include lighting.

Councilman Taylor stated that the dock space at the Reed Park is a good deal for transient boaters.

Town Manager Tolbert added that the current facility holds 10 boats, and the new facility will hold 15 boats the same size and along the long pier it could handle a 100' vessel.

Police Department

Chief Fisher advised that Mr. Jeff Flournoy, the ESVA 911 Director, escorted vendors for the new radio system to the dispatch center and both towers. He stated that the Flock Sec. cameras have been installed. He reported that he attended the Radio Committee kickoff meeting. He also had camera training and the officers had annual in-house training. He advised that Officers Matthews and Renas started the academy.

Councilman Taylor asked if they were working on a competitive pay scale. He commented further.

Chief Fisher advised that they are working on a competitive pay scale, and it should be completed soon.

Public Works Department

Public Works Director Parks reported that they completed 4 new water services and 4 replacement or moved water services. They graded in Ocean Breeze, conducted sidewalk drainage improvements at the Library where they installed a drop-inlet with pipe, and ditch grating in Sunnywood. He advised that the boat ramp work has started in Memorial Park. He added they have been conducting safety meetings as well. He reported that they will begin the Cropper Street Project next week. He also stated that they have 1 waterworks employee going to Roanoke for training.

There was discussion regarding the cost of materials to grade in Ocean Breeze.

Councilwoman Bowden feels they should review the policy for private roads. There was further discussion.

Emergency Services

Director of Emergency Services Rush reported on the calls for the month which were down 12 from last year. He advised of the award of the 2022 Rescue Squad Assistance and showed the equipment that was purchased. He reported on the State EMS Advisory Board and the House Bills. He also reported on the meeting and issues they're having across the state. He stated that Antares NG19 will launch April 7th. He discussed the Safe Station AED Grant, which is climate controlled and would require electricity. He stated he would like to have one at Robert Reed Park, change out the AED with one at the Harbor, Memorial Park, and Brianna's Park. The Town/EMS would be responsible for maintenance and supplies.

Director of Emergency Services Rush reminded everyone to be prepared as they are in nor'easter season and moving toward tropical storm season. He also mentioned that it is possible to have an earthquake. He reviewed the COVID stats.

There was discussion about the latest launch which didn't include the State Police presence along the Causeway.

Committee Reports:

Budget and Personnel Committee Meeting

Vice Mayor Bott advised there is nothing to report as the minutes are in the packet.

Ordinance Committee Meeting

Councilman Savage reported that they reviewed the Noise Ordinance. They made some recommendations which will be brought back to the next meeting this Thursday.

Adoption of the Minutes of the January 3rd and January 19th, 2023, Council Meetings
Councilwoman Bowden motioned, seconded by Councilwoman Richardson to adopt the minutes of the January 3rd and January 19th, 2023, Council meetings as presented.
Unanimously approved.

Presentation by the Island Library

Mr. Bryce VanStavern with the Island Library thanked Council for their generous donation. He reviewed a PowerPoint presentation of the 2022 events, programs, and fundraisers. He advised they would be doing the same programs, events, and fundraisers for 2023. He again thanked Council, the Library staff, and volunteers.

Chamber of Commerce Annual Report

Chamber Executive Director Shotwell reviewed the 2022 Annual Report. She reported on marketing paid for with ARPA funds, statistics on outreach and impressions, events, programs, and fundraisers. She advised of the digital kiosk they purchased and its capabilities. The 2023 tourism brochure has been distributed. She also advised of the new webcam to be installed at the Harbor. She stated that they earned extra media with the request to name the Chincoteague Pony as the official Pony of the State. She thanked Council adding they couldn't do any of this without their financial help.

Mayor and Council Comments

Councilwoman Bowden thanked Mrs. Adams for her comments. She feels they need to support the businesses on the Island. She also was happy for Mr. Cork McGee who is 92 years adding that this is a milestone. She stated that it was great to see him out. He is a man of a few words but a lot of heart.

Vice Mayor Bott stated they need to review the policies, procedures and protocols for purchasing.

Councilman Taylor commented on Mr. Cork as well and his carvings. He stated they have the best artist on the Island. He commented on utilizing the Island businesses.

Councilman Savage stated that Mr. Cork is a Teaguerholic who has done some great things.

Mayor Leonard expressed how glad he was to see everyone out at the meeting.

Closed Meeting in Accordance with §2.2-3711 (A) (1) of the Code of Virginia for discussion and review of specific personnel matters.

Councilman Taylor motioned, seconded by Councilman McComb to go into a closed meeting in accordance with §2.2-3711 (A) (1) for discussion and consideration of the acquisition of real property for a public purpose and consultation with staff pertaining to probable litigation.

Ayes: Bott, Bowden, McComb, Richardson, Savage, Taylor

Nays: None

Absent: None

Certification of Closed Meeting in Accordance with §2.2-3712 (D) of the Code of Virginia:

Councilman Taylor motioned, seconded by Councilman McComb in accordance with §2.2-372 (D) of the Code of Virginia that the Council certify that to the best of each Council Member's knowledge.

(2) only public business matters lawfully exempted from opening meeting requirements under this chapter and only such public business matters were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered. All present were in favor and the motion was carried.

Ayes: Bott, Bowden, McComb, Richardson, Savage, Taylor

Nays: None

Absent: None

Adjourn

Councilman Taylor motioned, seconded by Councilman McComb, and others to adjourn. Unanimously approved.

J. Arthur Leonard, Mayor

Michael T. Tolbert, Town Manager

MINUTES OF THE FEBRUARY 16, 2023
CHINCOTEAGUE TOWN COUNCIL MEETING
Council Chambers

Council Members Present:

J. Arthur Leonard, Mayor
Christopher D. Bott, Vice Mayor
William T. McComb, Jr., Councilman
Ellen W. Richardson, Councilwoman
K. Jay Savage, Councilman
Gene W. Taylor, Councilman

Council Members Absent:

Denise P. Bowden, Councilwoman

Staff Present:

Mr. Michael T. Tolbert, Town Manager
Mr. Robby Fisher, Chief of Police

Call to Order

Mayor Leonard called the meeting to order at 6:00 p.m.

Invocation

Councilman Savage offered the invocation.

Pledge of Allegiance

Mayor Leonard led in the Pledge of Allegiance.

Public Comment

- Mrs. Pat Farley, 3243 Lisa's Lane, commented that the Planning Commission meeting that held Wednesday, February 15th. She stated that it wasn't on the meeting calendar. She added that the minutes weren't in detail to know what the discussion was about. She expressed her concern and agreed there should be height restrictions based on neighboring properties.

- Mr. Roger Adams, owner of Adams Auto Repair, 5006 Deep Hole Road, came before Council to apologize to Councilwoman Richardson, Town Manager Tolbert, and Chief Fisher for an incident that happened a couple of months ago.

- Mr. Tommy Clark, owner Don's Seafood Restaurant, 4113 Main Street, addressed the proposed change in the Noise Ordinance. He gave a demonstration of the allowed decibel level in a commercial district. He suggested lowering the level.

Agenda Adoption

Councilman McComb motioned, seconded by Councilwoman Richardson to adopt the agenda as presented. All present were in favor and the motion was carried.

Ayes: Bott, McComb, Richardson, and Taylor

Nays: None

Absent: Bowden, Savage

Consider Personnel Policy Change

Town Manager Tolbert advised that the current personnel policy permits the use of sick leave "For medically necessary care of family members such as spouse, child, parents, siblings or in-laws living in the same household as the employee." He added that at the February 14 meeting, the Budget and Personnel Committee voted to recommend a change in this policy to allow the use of sick leave for the care of a parent (mother or father) not living in the same household. To section 5.9 paragraph B add a number 5 as follows:

B. Sick Leave

Sick leave shall accrue at the rate of 4 hours per pay period, and, when taken, shall be used on an hour for hour basis. Sick leave shall be used:

1. In conjunction with FMLA leave (section 6);
2. For an illness or injury incapacitating the employee and preventing the employee from performing assigned duties,
3. For doctor, or dental appointments during working hours, and
4. For medically necessary care of family members, such as spouse, child, parents, siblings, or in-laws, living in the same household as the employee.
5. For illness, injury or necessary care of parents (mother and/or father) of the employee not living in the same household.

Councilman McComb requested to add “children not living in the household” to the motion as well.

Discussion continued and Council concurred to approve what was presented and revisit the matter of possibly adding “children of the employee not living in the same household” to the policy at the next Budget and Personnel Committee meeting.

Vice Mayor Bott motioned, seconded by Councilwoman Richardson to adopt the change in the Personnel Policy as presented. All present were in favor and the motion was carried.

Ayes: Bott, McComb, Richardson, Taylor

Nays: None

Absent: Bowden, Savage

FY24 Budget Review: Harbor, Water, and Public Works

Town Manager Tolbert reviewed the proposed expenses for the Harbor, Water, and Public Works Departments.

Consider Noise Ordinance Recommendation

Town Manager Tolbert explained the changes. He advised that the Ordinance Committee reviewed and approved the changes and are requesting Council approval.

Councilman Savage arrived at the meeting.

There was discussion about decibel levels, daytime vs nighttime hours, violations, fines, etc.

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.~~ 10:00 p.m., 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.~~ 10:00 p.m. ~~midnight~~ of one day through 7:00 a.m. of the next.

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.

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 1977, § 12-10; Ord. of 6-21-2001)(Amended ____)
Cross reference(s)—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.

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.
- (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.
- (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; Amended 2-19-2004)

Sec. 22-31. Cease and desist.

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 section 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~~ 90-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 2-19-2004 and _____)

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. The first violation of this article is declared to be a civil violation and shall be punishable by a fine not to exceed \$250. A Second violation of this article within the continuous 90-day period is declared to be a criminal violation and the violating person or entity shall be guilty of a Class 2 misdemeanor. Any third violation of this article within the same continuous 90-day period is declared to be a criminal violation and the guilty person or entity shall be guilty of a class 1 misdemeanor.~~
(Ord. of 5-15-1999(1), § 12-18: (Amended _____)

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.

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:

District	Daytime level (dBA)	Nighttime level (dBA)
R-1	65	55
R-2	65	55
R-3	65	55
C-1	70 65	60
C-2	70 65	60

- (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;
 - 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 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.

- (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; Amended 2-19-2004)

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)

Secs. 22-37—22-60. Reserved.

Councilman Savage motioned, seconded by Vice Mayor Bott and Councilman McComb to adopt the Noise Ordinance as presented. All present were in favor and the motion was carried.

Ayes: Bott, McComb, Richardson, Savage, Taylor

Nays: None

Absent: Bowden

Mayor and Council Comments

Councilwoman Richardson advised she drove the children from the Elementary School to the Brianna's Park on Valentine's Day for Kindness Day. She advised that one child told her that it was the "bestest" Valentine's Day they ever had. She stated that a Town employee recognized that the portable restrooms needed to be cleaned and it was taken care of. She added that it was a

great day. She also asked Town Manager Tolbert when the Brianna's Park restrooms would be completed.

Town Manager Tolbert advised they are working on this now. They need power, air conditioning and lights.

Councilwoman Richardson also asked if it was the Town's responsibility to get picnic tables at the pavilion.

Councilman Taylor advised that he believed someone was going to donate them.

There was discussion about composite picnic tables.

Vice Mayor Bott stated that in the strategic planning session they discussed height restrictions and he asked about the outcome.

Town Manager Tolbert stated there was no outcome. The Residential Code allows a house to be built on a lot in an existing neighborhood to not use the specific setbacks but use the average setbacks of the neighboring properties. He showed a picture of a new home on Church Street. He explained further that if a house is built in a flood zone the Zoning Ordinance allows the maximum height to be 36' at 2' above base flood freeboard. However, if it is not in a flood zone, it can be 36' above grade. He advised that the house on Church Street appears out of character in the neighborhood, but is legal. He added that he and Building and Zoning Administrator Bowden will ride around the Island to come up with a scheme to maintain the character of the neighborhoods. There would have to be some minimum considerations, but they should be able to come up with something.

There was further discussion about the new home on Ocean Blvd. that vacated the property lines.

Councilman McComb thanked Mr. Adams for his apology.

Councilman Savage apologized for his tardiness.

Mayor Leonard reported on his meeting last night with the local Boy Scouts. He also stated that Alabama's basketball team is #1. He concluded with "Roll Tide!".

Adjourn

Councilman McComb motioned, seconded by Vice Mayor Bott and Councilwoman Richardson to adjourn. Unanimously approved.

J. Arthur Leonard, Mayor

Michael T. Tolbert, Town Manager