

ORDINANCE COMMITTEE

A G E N D A

TOWN OF CHINCOTEAGUE

January 14, 2009 - 5:00 P.M. – Council Chambers - Town Hall

CALL TO ORDER

ROLL CALL

OPEN FORUM / PUBLIC PARTICIPATION

AGENDA ADOPTION:

1. Food Service Ordinance
2. Wetlands Board Consideration

ADJOURN:

MEMORANDUM

To: Ordinance Committee

From: Jared B. Anderson, Town Planner

Date: January 2, 2009

Subject: Exemption to Regulations for Title 35.1 of the State Code of Virginia

This issue was discussed during a previous Council meeting. It has to do with the fact that for festivals such as the Chili Chowder Cook-off each participant (food preparer) must get a permit from the Accomack County Health Department. The Health Department indicated that each time there is a fair or youth athletic activity and food preparation is involved the people who prepare the food will need a health department permit. This can be cumbersome and have a limiting effect on the growth of fair/events that we have throughout the year.

The State Code of Virginia enables a municipality to create an ordinance that would allow certain exemptions for food booths at fairs and youth athletic activities. I request that the Ordinance Committee review this ordinance, and if they so desire they could recommend to Council the following amendments to Chapter 18 of the Town Code:

Article III. Exemptions

Sec. 18-52 Exemptions

The provisions of this title applicable to restaurants shall not apply to:

- 1. Boardinghouses that do not accommodate transients;**
- 2. Cafeterias operated by industrial plants for employees only;**
- 3. Churches, fraternal, school and social organizations, and volunteer fire departments and rescue squads which hold occasional dinners, bazaars, and other fund raisers of one or two days' duration, at which food prepared in the homes of members or in the kitchen of the church, school or organization is offered for sale to the public;**
- 4. Grocery stores, including the delicatessen portion which is a part of a grocery store selling exclusively for off-premises consumption, and places manufacturing or selling packaged or canned goods;**
- 5. Churches which serve meals for their members as a regular part of their religious observances;**
or
- 6. Convenience stores or gas stations that are subject to the Department of Agriculture and Consumer Services' Rules and Regulations Pertaining to the Sanitary and Operating Procedures in Retail Food Stores or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such**

convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax.

(Code 1950, § 35-38; 1962, c. 629; 1972, c. 493; 1981, c. 468; 1982, c. 51; 1993, c. 201; 2004, c. 227.)

Sec. 18-53

The governing body of any county, city, or town may provide by ordinance that this title shall not apply to:

1. Food booths at fairs, if such booths are promoted or sponsored by any political subdivision of the Commonwealth or by any charitable nonprofit organization or group thereof.

2. Concession stands at youth athletic activities, if such stands are promoted or sponsored by either a youth athletic association or by any charitable nonprofit organization or group thereof which has been recognized as being a part of the recreational program of the political subdivision where the association or organization is located by an ordinance or resolution of such political subdivision.

The ordinance shall provide that the health officer of the county, city, or town in which the fair or activity is held, or a qualified person designated by him, shall exercise such supervision of the sale of food as the ordinance may prescribe.

(Code 1950, § 35-38.1; 1964, c. 462; 1981, c. 468; 1983, c. 251.)

From: Privett, Keith (VDH) [mailto:Keith.Privett@vdh.virginia.gov]
Sent: Monday, January 12, 2009 1:36 PM
To: Jared Anderson
Cc: Hagy, Gary (VDH)
Subject: RE: Town of Chincoteague Questions...

Mr. Anderson,

Here are responses to your questions. I have also attached Section 35.1-26 of the Code of Virginia, which enables Towns to pass such ordinances.

Keith

Keith C. Privett
Environmental Health Supervisor

Would this ordinance, if adopted, allow for the Town of Chincoteague to exempt certain activities (where there is food preparation) from getting a health department permit?

Yes.

What types of events would be covered if the Town were to adopt this ordinance?

Those food booths promoted or sponsored by any political subdivision of the Commonwealth or by any charitable nonprofit organization or group thereof at fairs and festivals that the town proposes to exempt from the health department's regulations. However, the ordinance must state that the health officer (District Health Director) or his qualified designee will exercise some type of supervision of the sale of food. Also, the Code of Virginia only authorizes such an exemption for food booths at fairs and festivals (which is interpreted to mean events sponsored by third parties). The ordinance cannot exempt all temporary food booths.

If the Town adopts this ordinance, is there any liability the Town assumes?

This is a legal question that should be directed to your Town Attorney. The Health Department can not provide legal advice concerning the Town's liability if they enact such an ordinance.

Do you have any concerns about the Town adopting this ordinance?

I cannot identify concerns about an ordinance that has not been drafted or proposed. However, any ordinance that exempts certain food service activities from permitting and inspection is cause for concern at varying levels, depending on the type of foods being served. I would have much more concern over fairs with a large number of booths with some food preparation occurring ahead of time and/or off site that are participating in "chili and chowder cookoffs", compared to a booth that is serving hot dogs, funnel cakes and other simple foods prepared onsite."

For you information, Franklin County has recently passed a similar ordinance. You may view that at:

<http://www.municode.com/resources/gateway.asp?pid=10799&sid=46>

It is listed at the bottom of "ordinances recently passed but not yet codified". It is listed as [Res. No. 20-06-2008 -- Regulation of Food -- Food at Fairs ARTICLE I Sec 9 1.1.pdf](#)

From: Jared Anderson [mailto:jared@chincoteague-va.gov]
Sent: Friday, January 09, 2009 8:44 AM
To: Privett, Keith (VDH)
Subject: Town of Chincoteague Questions...

Mr. Privett,

Thanks for talking with me yesterday afternoon on the phone, it was very helpful. I have a few questions that I hope you can briefly answer about Section 35.1-26 of the State Code of Virginia.

Would this ordinance, if adopted, allow for the Town of Chincoteague to exempt certain activities (where there is food preparation) from getting a health department permit?

What types of events would be covered if the Town were to adopt this ordinance?

If the Town adopts this ordinance, is there any liability the Town assumes?

Do you have any concerns about the Town adopting this ordinance?

Thanks for your help.

Regards,

Jared B. Anderson

MEMORANDUM

To: Ordinance Committee
From: Jared B. Anderson, Town Planner
Date: January 9, 2009
Subject: Possible Implementation of a Wetlands Board for Town

Please see “A guide to creating the Town of Chincoteague Wetlands Board.” This was put together by Mr. Jim White. There are several areas of information that have been included in this guide book.