

ORDINANCE COMMITTEE

A G E N D A

TOWN OF CHINCOTEAGUE

April 12, 2012 - 5:00 P.M. – Council Chambers - Town Hall

CALL TO ORDER

ROLL CALL

OPEN FORUM / PUBLIC PARTICIPATION

AGENDA ADOPTION:

1. Water Utility Service Connections and Extensions Code Amendment
2. Pony Penning Sales Permit Ordinance, Chapter 18 Code Amendment
3. Committee Member Comments

ADJOURN:



MEMORANDUM

Town of Chincoteague Inc.

Date: April 11, 2012
To: Ordinance Committee
From: Harvey Spurlock, Public Works Director
Subject: Utility Ordinance Amendment

- ❖ **Review proposed Amendment to Section 62-87 and 62-88 Service Connection Requirements**
 - ❖ **Forward to Town Council with a recommendation for approval**
-

Town Staff proposes the following amendments to Town Code Chapter 62-Utilities, Article II-Water, Division 3-Service Connections and Extensions, Section 62-87 Service Connection Requirements and 62-88 Water Main Extensions to improve the management of the Town's Water Supply system.

Sec. 62-87. Service connection requirements.

(a) Each parcel requiring a service connection to the water system shall be adjacent to a water main. Where properties are not adjacent to a water main, the following shall apply:

(1) The water system (nearest main) shall be extended at the expense of the property owner and in accordance with the requirements of section 62-88.

~~(2) A parcel may be served from a meter and connection located on the property of others, provided that the parcel owner has a recorded perpetual easement granted by the other property owner which provides for the installation and maintenance of the water meter and service line between the town's water main and the parcel to be served. The minimum width of such easement shall be five feet. The use of easements as described in this subsection shall not apply to any legal division of property occurring after November 7, 1991.~~

~~(3)~~ (2) A parcel may be served from a connection, meter and service line located in an existing older easement and/or right-of-way, ~~provided the use of such is not~~

~~specifically described. The minimum width of such easement shall be five feet.~~ The town will interpret such easements and rights-of-way- to allow for total usage, which would include the right to install and maintain water utilities. Such easements and rights-of-way as described in this subsection must be adjacent to a water main and be contiguous to the involved parcel. The term "older" as used in this section, shall refer to property or divisions of property legally recorded prior to ~~December 6, 1971~~ November 7, 1991.

(b) The use of nonspecific older easements and rights-of-way and perpetual easements shall only be permitted when there is no other practicable avenue available to provide water to the requiring parcel.

Sec. 62-88. Water main extensions.

(a) The owner and/or developer of a parcel requiring a water main extension by virtue of the requirements of subsection 62-87(a) shall request such extension from the town in writing. With the written request, the owner and/or developer shall also submit recorded drawings, plats or surveys depicting the parcel to be served by the requested extension. Such drawings shall include the delineation of the utility easements to be used by the town for the placement and maintenance of the requested water main. Delineated easements on recorded drawings shall include the finished grade elevation of the easement area. In the absence of utility easements being included in recorded drawings, easements and certification of elevation may be conveyed through separate perpetual deed of easement or agreement to the town. Utility easements shall be a minimum of ten feet in width. Pavement for roadways shall not be installed over utility easements.

(b) Upon review of the request and within 30 days of the request, the town shall design and size the appropriate extension to the water system and calculate the cost of installation of the extension. Costs shall include an administrative fee percentage, set by the town council.. The requester will be notified of the cost of the installation and allowed 30 calendar days to initiate the installation by paying the provided cost. If payment is not made within the allotted time, the requester shall submit subsequent requests as necessary to allow the town to calculate the new cost. The town shall have the right to recover costs incurred from repeated design and calculation in subsequent cost calculations.

(Amended 4/19/07)

(c) Once payment for an extension is made, the town shall schedule and implement the work within 60 calendar days.

(d) Water main extensions shall be designed and sized on a case-by-case basis, ~~but in no case will pipe with inside diameter sizes of less than six inches be used for mains~~, nor will required fire hydrants be deleted from a potential extension.

(e) Property owners assume all responsibility for delineation of property to be served by water mains and the delineation of utility easements to be used for the installation of water mains. All property markers relevant to water main installation shall be in place in the field and located prior to the town's installation work.

(f) All obstructions to the path of the water main and service connections shall be cleared by the property owner prior to installation work.

(Code 1977, § 15-4-3; Ord. of 4-5-1999, § 15-4-3)



MEMORANDUM

Town of Chincoteague Inc.

Date: February 21, 2012 (Updated April 11, 2012)
To: Ordinance Committee
From: William Neville, Planning Director
Subject: Pony Penning Sales Permit Ordinance Amendment

- ❖ **Review proposed the Ordinance Amendment and Planning Commission recommendations**
 - ❖ **Review proposed Pony Penning Permit Application and Staff recommendation**
 - ❖ **Forward to Town Council with a recommendation for a public hearing**
-

The Town of Chincoteague Ordinance Committee met on September 8, 2011 to consider a possible amendment to the Pony Penning Sales Permit Ordinance that would relocate requirements for permits and reporting from the Zoning Ordinance to the Business section of the Town Code. There was also the suggestion to include all special events in this section of the ordinance. The main purpose of the proposed revision is to encourage all vendors to report their sales income in a timely matter or risk forfeiting their deposit.

The Town of Chincoteague Planning Commission held a public hearing on November 8, 2011 for an amendment to the Pony Penning Sales Permit Ordinance as described below. There was no public comment.

Zoning Ordinance – Amend Appendix A-Zoning, Article II Definitions, Section 2.127 – Pony Penning Sales to repeal and replace the entire definition section, and recommend to the Town Council an amendment of Chapter 18, Article II, Division 2, Section 18-96 of the Town Code to include revised permit requirements for Pony Penning Sales.

The Planning Commission discussed this amendment and identified several items for consideration by the Ordinance Committee before referring it to the Town Council for public hearing.

- Clarify or delete Section 2.127, paragraph (2) regarding the 50% of gross income exemption.
- Describe the \$300.00 permit fee as a ‘fee’ or a ‘deposit’ if a portion can be refundable.

- \$300.00 permit fee is too much for small business to pay for this event
- Require a \$50.00 business license fee and a \$250.00 deposit rather than a \$300.00 permit fee
- Consider whether yard sales should continue to be restricted during the entire week, or just on the Wednesday through Saturday of Pony Penning week.
- Consider other special events throughout the year that may also be covered by this revised code section.

The Planning Commission unanimously approved a motion on January 10, 2012 to recommend to Town Council that Section 2.127 of the Zoning Ordinance be repealed and replaced with the following definition of Pony Penning sales;

Sec. 2.127. Pony Penning sales.

Pony Penning sales is herein defined in this ordinance to mean and include all general sales within the Town that are open to the public during the period beginning no sooner than the Saturday preceding Pony Penning and ending on the Saturday immediately following Pony Penning. ,for the purpose of disposing of any personal property. A permit is required for conducting Pony Penning sales within the Town in accordance with Chapter 18 of the Code.

and recommend to the Ordinance Committee a concurrent amendment of Chapter 18, Article II, Division 2, Section 18-96 of the Town Code to include revised permit requirements for Pony Penning Sales as follows:

Chapter 18. Businesses

Article II. Licenses

Division 2. Specific Businesses and Occupations

Sec. 18-91. Carnivals, circuses.

(a) For the purposes of this section, the definition of a carnival shall include any type of show or exhibition mentioned and described in Code of Virginia, § 58.1-3728.

(b) For every license to operate a carnival or circus or other similar organization, there shall be paid a license tax of \$500.00 for each day an exhibition is given in the town;

(c) No carnival or circus which is produced or operated or owned primarily by amateurs who are town residents and the gross income of which inures exclusively to the benefit of a school, church or fire department or of any locally sponsored nonprofit organization operated for charitable and benevolent purposes shall be subject to any license tax.

(d) A circus or carnival, which is sponsored by a local nonprofit organization, operated for charitable and benevolent purposes shall not be subject to a license tax.

(Code 1977, § 10-37)

Sec. 18-92. Itinerant vendors.

(a) The term "itinerant vendors," as used in this section, shall be construed to mean and include all persons, whether as principal, agent or salesman, who engage in

temporary or transient business in this town in one or more places and who, for the purpose of carrying on such business, hire, lease or occupy any building or structure for the exhibition or sale of such fruits, goods or merchandise for a period of less than one year.

(b) A license tax of \$500.00 per annum shall be assessed on all persons bringing to and exhibiting for sale to consumers at retail in the town, in temporary places or fixed places of sale, fruits and goods or merchandise as bankrupt, consigned trustee, railroad wreck, fire, slaughter stock, leftover exposition stock sale or sale of like character, and on all itinerant vendors doing business in the Town.

(Code 1977, § 10-39)

Sec. 18-94. Peddlers.

(a) *Generally.* Any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the goods, wares or merchandise or who actually sells or barter the goods, wares or merchandise shall be deemed to be a peddler. Any delivery made on the day of the sale shall be construed as equivalent to delivery at the time of the sale. Any person claiming exemption from this section on the grounds that he is delivering goods, wares or merchandise previously sold to the customer shall, upon request of any police, tax or revenue officer, furnish evidence of his claim, other than his mere statement, voiced or signed order describing the goods, wares or merchandise involved and the amount and price thereof. Failure to furnish such evidence shall be sufficient grounds for charging the person operating the vehicle with a violation of this section. In any prosecution for a violation of this section, the claim must be corroborated by satisfactory evidence. The license tax for peddlers shall be as follows:

(1) *Wholesale peddlers.* By virtue of the authority conferred in Code of Virginia, § 58.1- 3718, there shall be a license tax of \$100.00 for each truck or vehicle used by any peddler who may sell and deliver at the same time to licensed dealers and retailers, except a farmer, a dealer in forest products, a producer or a manufacturer taxable on capital by this state. This license tax shall not apply to persons properly licensed and doing business in the town.

(2) *Retail peddlers.* The license tax for retail peddlers shall be as follows:

- a. Peddlers of goods, wares or merchandise, on foot, \$225.00.
- b. Peddlers of goods, wares or merchandise, other than on foot, \$500.00.
- c. Peddlers of meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature, not grown or produced by the peddler, for each vehicle, \$75.00.

(b) *Exemptions generally.* No peddler's license shall be required of a dealer in ice, wood or charcoal, who peddles the ice, wood or charcoal from a vehicle, provided such dealer has taken out a merchant's licenses.

(c) *Farm or family supplies of perishable nature.* Nothing contained in this section shall be construed as imposing any license tax upon a person selling farm or family supplies of a perishable nature within the town when the products to be sold are grown or produced by such person, but proof shall be shown that such products are so raised by the party offering them for sale. Before any license shall be issued to any person to be a grower, producer or manufacturer, the licensee shall first file with the town manager a written statement duly sworn to and attested to by a notary public or

magistrate of his community, setting out in full and in detail the facts claimed to make the applicant a grower, producer or manufacturer. No license shall be issued by the town manager until such certificate, duly sworn, shall first be produced and filed. The name, address and occupation of the applicant and the witness who executed the certificate shall be given in full.

(d) *Time limits and locations of sales.* No licensee under this section shall park his truck, wagon, cart or vehicle within the business district or at any location upon any street or public place in the town for a longer period than 15 minutes or within 100 feet of any store, shop or stand from which similar merchandise is sold or in any block for a longer period than one hour in any day to sell and deliver any article which he might offer for sale from house to house, except in such defined areas as may be specifically set aside by the town council for sale of such merchandise.

(e) *Enforcement.* It shall be the duty of the police officers and other town officers to fully enforce this section and to have warrants issued against any person violating this section. (Code 1977, § 10-41)

Cross reference—Streets, sidewalks and other public places, ch. 50.

Sec. 18-95. Special event vendors, carnivals, and circuses.

(a) Notwithstanding the provisions of Sec. 18-91 and Sec. 18-92 and the license requirements enumerated therein, any person, firm, or corporation engaged as an itinerant vendor or operating a carnival or circus at a special event conducted or sponsored by a local “charitable nonprofit organization” or a local nonprofit organization, as herein defined, or the Chincoteague Recreation and Convention Center Authority shall be exempted from such license tax, unless such person, firm, or corporation is otherwise required to be licensed in accordance with Chapter 18.

(b) A “Special Event” for purposes of this section shall be an event which is conducted for a limited number of days not exceeding fourteen (14) in any calendar year.

(c) A local “charitable nonprofit organization” for purposes of this section shall mean an organization which is described in Internal Revenue Code §501(c)(3) and to which contributions are deductible by the contributor under Internal Revenue Code §170, except that educational institutions shall be limited to schools, colleges, and other similar institutions of learning, and a majority of such organization’s receipts are utilized, directly or indirectly, within the Town of Chincoteague.

(d) A local nonprofit organization means an organization exempt from Federal Income Tax under Internal Revenue Code §501 other than a charitable nonprofit organization, and the majority of such organization’s receipts are utilized, directly or indirectly within the Town of Chincoteague.

(Adopted 02-07-05, Amended 03-06-06)

Sec. 18-96 Pony Penning Sales

(a) *Generally.* *Pony Penning sales* is herein defined in this ordinance to mean and include all general sales within the town, that are open to the public during the event, for the purpose of disposing of any personal property.

(b) *Permit.* A permit is required for conducting Pony Penning sales within the town and must be secured eight days prior to the Saturday preceding Pony Penning. The permit shall be displayed at the sale location for the entire length of the sale. Yard sales are prohibited during the event.

(c) *Permit fee.* The permit fee shall be ~~\$300~~50.00.

(1) Anyone with a valid town business license is exempted from the permit fee.

~~(2) — Any person who produces documentary evidence to the reasonable satisfaction of the Town Manager that said person derives less than 50% of their gross income from the sale of such merchandise is exempt from the permit fee.~~

(3) Anyone selling prepared food as defined in the town's meal tax ordinance must submit a deposit to the town manager in an amount of ~~\$500~~250.00 prior to receiving such permit, which amount shall be applied to any tax due as a result of such sales. Report of actual sales must be submitted ~~by August 20th~~within 30 days from the end of the event. Failure to report actual sales by the due date will forfeit the deposit. The remaining balance of the deposit, if any, shall be refunded to permittee upon computation of the actual tax due and payable as determined by such sales. ~~Anyone conducting such food sales who has for a period of three (3) years preceding this permit, complied with all applicable reporting and payment procedures as otherwise required, is exempt from this deposit requirement.~~

(d) *Duration of sale; hours of operation; frequency.* Sales conducted under this section are restricted to a maximum period beginning no sooner than the Saturday preceding Pony Penning and ending on the Saturday immediately following Pony Penning. Any sale exceeding this time period or otherwise not in compliance with this section will not be considered Pony Penning sales and will be in violation of this section and will be considered a business and must comply with all applicable zoning and business licensing requirements.

(Amended xx/xx/11)

Sample Motion:

- 1) The Ordinance Committee accepts (with revisions) the changes to the Pony Penning Sales Permit proposed by Town administrative staff and the Planning Commission and recommends a public hearing to be scheduled at the next Town Council meeting, or
- 2) The Ordinance Committee refer the item to a Town Council workshop for discussion prior to a public hearing, or
- 3) An alternate motion.

Other sections of Chapter 18 are included below for reference purposes:

Sec. 18-34. Applicability to business, employment or profession not included.

Nothing contained in this article shall be construed to repeal any license tax imposed by this article upon persons, property, admissions or any subject not mentioned in this article. In every case in which a license is imposed by the state on any business, employment or profession not specifically mentioned, a town license tax equal to the amount of the state tax is imposed for the privilege of conducting such business, employment or profession in the town.

(Code 1977, § 10-5)

Sec. 18-35. Violations; penalties.

It shall be unlawful and shall constitute a misdemeanor for any person to conduct a business or to engage in a profession, trade or occupation before procuring a license as required under this article or then and there having a valid license. It shall also be unlawful and shall constitute a misdemeanor for any person to violate any of the sections of this article.

(Code 1977, § 10-6; Ord. of 8-5-1996)

Sec. 18-36. Required.

Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if:

(1) The person has a definite place of business in this jurisdiction;

(2) There is no definite place of business anywhere and the person resides in this jurisdiction; or

(3) There is no definite place of business in this jurisdiction but the person operates amusement machines or is classified as an itinerant merchant, peddler, carnival, circus, or contractor subject to Code of Virginia, § 58.1-3715 or a public service corporation.

(Code 1977, § 10- 7; Ord. of 8-5-1996)

Sec. 18-37. Application; issuance.

(a) Every person desiring to obtain a license to pursue any business, trade or occupation or to do anything for which a license is required shall make application therefore in writing to the town manager. The application shall state the residence of the applicant; the social security number or tax identification number of the applicant; the nature of the business, employment, profession or thing to be done; and the place where it is proposed to be prosecuted. Where the license tax is to be measured by gross receipts, the applicant shall make a statement under oath as required by subsection (b) of this section. The town manager shall assess such applicant or other person of whom a license is required with the license tax required by law and shall issue a license to the applicant to practice the business, trade or occupation or other thing therein named, which license shall not be valid or effective unless and until the license tax required shall be paid to the town. If it is a business for which a license can be granted only on the certificate of a court or other officer, such license shall not be valid or effective until such certificate shall be obtained.

(b) When the license tax is based upon gross receipts, the town manager shall require a signed statement from the applicant as to the amount of such gross receipts, except for a beginner. After computing the amount of the license tax in each case, the town manager shall retain one copy of the license tax form and shall furnish the applicant with one copy. Upon payment of the required license tax by the licensee, the manager shall receipt the payment upon both the original and the copy presented by the licensee, after which the manager shall give the original to the licensee and retain the copy of the receipted form.

(c) Any business owned and operated by a full-time student under the age of 23 having gross receipts, as defined in section 18-32, for the preceding year of less than \$5,000.00 shall require a license but shall be exempt from payment of license tax.

(d) No business license shall be issued, new or renewal, until the applicant has produced satisfactory evidence that all delinquent business license, personal property, meals, transient occupancy, severance and admissions taxes owed by the business to the town have been paid which have been properly assessed against the applicant by the town.

(Code 1977, § 10-8; Ord. of 5-17-2001, (c); Ord. of 8-5-1996, (d))

Sec. 18-38. Separate license required for each place of business.

A separate license shall be required for each place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:

(1) Each business or profession is subject to licensure at the location and has satisfied any requirement imposed by state law or other sections of this Code or provisions of town ordinances.

(2) All of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate.

(3) The taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

(Code 1977, § 10-9; Ord. of 8-5-1996)

Sec. 18-44. Nonresident businesses, trades or occupations.

It is the declared intent of the town to avoid either discrimination or protective license taxation as it affects any business, trade or occupation, regardless of location or type of transaction, and to this end businesses, trades or occupations carried on in part within the town, but having no regularly constituted place of business in the town, shall be subject to equal conditions and equal rates of license taxation as those businesses, trades or occupations having a regularly constituted place of business within the town. For nonresident businesses, trades or occupations, the license tax liability shall be measured by only that portion of the business, trade or occupation carried on within the town.

(Code 1977, § 10-15)

Sec. 18-45. Tax imposed on privilege of doing business.

Each and all of the license taxes imposed pursuant to this article are in all cases imposed upon the privilege of doing business in the town, including all phases and activities of the business, trade or occupation conducted in the town.

(Code 1977, § 10-17)

Sec. 18-46. Levy, collection; term; use of money received.

For each and every year beginning with January 1 of each year and ending December 31 following, until otherwise changed, there are levied and there shall be collected the annual license taxes set forth in this article, except as otherwise provided in this article, on persons, firms, corporations, companies and associations conducting or engaging in the businesses, trades or occupations in the town for the support of the town government, the payment of the town debt and for other municipal purposes.

(Code 1977, § 10-18)

Sec. 18-47. Determination of taxes of new businesses.

Whenever any person begins a business, trade or occupation on or after January 1 of the license year, that person shall pay a **licensing fee for the year of application of \$50.00**. Each following year shall be measured in accordance with this article as specified.

(Code 1977, § 10-19) (*Amended 6/17/10*) (*Effective 7/1/10*)

Sec. 18-48. Proration of taxes.

There shall be no abatement from or proration of any license tax imposed under this article, except that any person who pays a flat-rate license tax and who shall begin business after the beginning of the license tax year shall pay to the town a license tax for the whole of the year. However, such portion of the license tax as the period between the first day of the year and the date of issuing the license shall bear to the whole year shall be deducted from the license tax to be assessed against the person for the privilege of doing the same business for the ensuing year when the tax becomes payable, and in computing the license tax, no deduction shall be made there from for any fractional part of a month. This section shall not apply to any gross receipts licenses issued under this article or to any license tax computed upon the amount of sales or contracts made or done by the licensee during the preceding year, nor shall this section apply to any such license taxes, the proration of which is expressly prohibited under other sections of this article.

(Code 1977, § 10-20)

State law reference—Proration of license taxes, Code of Virginia, § 58.1-3710.



PONY PENNING SALES APPLICATION

YARD SALES ARE PROHIBITED DURING THIS TIME PERIOD

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.

Pony Penning Sales as herein defined in this ordinance to mean and include all general sales within the town, open to the public.

PERMIT:

A permit is required for conducting Pony Penning Sales within the town and must be secured eight (8) days prior to the Saturday preceding Pony Penning. The Permit shall be displayed at the sale location for the entire length of the sale.

PERMIT FEE: The permit fee shall be ~~\$300~~50.00.

A. Anyone with a valid town business license is exempted from the permit fee.

B. Any person who produces documentary evidence to the reasonable satisfaction of the Town Manager that said person derives less than 50% of their gross income from the sale of such merchandise is exempt from the permit fee.

C. Anyone selling prepared food as defined in the town's Meal Tax Ordinance must submit a deposit to the Town Manager in an amount of ~~\$500~~250.00 prior to receiving such permit, which amount shall be applied to any tax due as a result of such sales and the remaining balance of the deposit, if any, shall be refunded to permittee at the end of such period upon computation of the actual tax due and payable as determined by such sales. ~~Anyone conducting such food sales who has for a period of three (3) years preceding this permit, complied with all applicable reporting and payment procedures as otherwise required, is exempt from this deposit requirement.~~

DURATION OF SALE; HOURS OF OPERATION; FREQUENCY:

Sales conducted under this article are restricted to a maximum period beginning no sooner than the Saturday preceding Pony Penning and ending on the Saturday immediately following Pony Penning.

Any sale exceeding this time period or otherwise not in compliance with this article will not be considered Pony Penning Sales and will be in violation of is article and will be considered a business and must comply with all applicable zoning and business licensing requirements.

SIGNS - GENERALLY:

SIGNS of not more than four (4) square feet (two feet by two feet) shall be permitted to be displayed, no more than three (3) days prior to such sale, to be located on private property only and shall not be placed on the public right-of way, without requiring any permits.

SIGNS displayed under this article must be removed within forty-eight hours of the close of the sale activities.

THIS PERMIT MAY BE REVOKED IN CASES OF ANY FALSE STATEMENT OR MISREPRESENTATION OF FACT IN THE APPLICATION ON WHICH THE PERMIT OR APPROVAL WAS BASED.

DATE OF APPLICATION: _____ **PERMIT #** _____

APPLICANT: _____

ADDRESS: _____

TELEPHONE #: _____

LOCATION OF PONY PENNING SALE: _____

PROPERTY OWNER: _____

DATE (S) OF SALE: _____

ITEMS BEING SOLD: _____

FEE: \$ _____ **DEPOSIT FOR FOOD SALES: \$** _____

APPLICANT'S SIGNATURE: _____

APPROVED BY: _____ DATE: _____
