

**MINUTES OF TOWN COUNCIL MEETING HELD
THURSDAY, OCTOBER 9, 2008
COLONIAL BEACH TOWN CENTER**

The regular meeting of Town Council was held on Thursday, October 9, 2008 at the Colonial Beach Town Center in Colonial Beach, Virginia. The members present were Mayor Rummage, Vice Mayor Trish King, Council Members David Coombes, Steve Kennedy, Burkett Lyburn and Karen Payne. Town Council Member, Ronald Ridgely and Town Clerk, Barbara Goff was absent. Also present were Interim Town Manager, Val Foulds, Town Attorney, Andrea Erard, Chief of Police, Chris Hawkins, Chief Financial Officer, Joan Grant, and Deputy Clerk, Mary Mendenhall

CALL TO ORDER:

Mayor Rummage called the regular meeting of Town Council to order at 7:00 p.m. and stated we would recite the Lord's Prayer and Pledge of Allegiance.

Mayor Rummage stated there are some people here tonight with an interest in the Boat Decal Ordinance. That will not be on the agenda this evening because there were changes and as a result it has to be re-advertised. It will be on the agenda for the November Town Council meeting.

At this time Chief Hawkins asked First Sergeant James Ashworth from the Virginia State Police to come to the front of the room to be presented with a Certificate of Appreciation from the Mayor. Chief Hawkins stated that First Sergeant Ashworth is responsible for our entire area. As you have seen in Town, the State Police have been a pretty strong presence at different events we have had since January. Going through accreditations, I have been able to call his office multiple times and they supply us with the things we need so I don't have to reinvent the wheel.

Mayor Rummage read the Certificate which stated:

WHEREAS, the Town of Colonial Beach supports a cooperative environment with all aspects of law enforcement; and

WHEREAS, First Sergeant James Ashworth has worked with the Colonial Beach Police Chief and his staff to build an exceptional working relationship; and

WHEREAS, First Sergeant Ashworth has provided extra manpower and has made himself available to work various assignments in the Town of Colonial Beach; and

WHEREAS, First Sergeant Ashworth supports and contributes to the increased patrol efforts and meets with the Chief of Police of the Town of Colonial Beach on a regular basis to ensure a cooperative environment; and

WHEREAS, First Sergeant Ashworth maintains open lines of communications with the Colonial Beach Chief of Police and his staff and always assists when called upon; and

WHEREAS, First Sergeant Ashworth has been supportive with his secretarial staff as the Town of Colonial Beach Police Department proceeds with State Accreditation; and

WHEREAS, First Sergeant James Ashworth's actions, have not gone unnoticed and are hereby acknowledged by the Town of Colonial Beach, the Town Council, and the Chief of Police.

THEREFORE BE IT RESOLVED, on the 9th day of October 2008, as Mayor of the Town of Colonial Beach, the Town Council and the Colonial Beach Police Department hereby thanks first Sergeant James Ashworth and the Virginia State Police for all of their time and effort in assisting the Town of Colonial Beach with such experience and professionalism.

Frederick C. Rummage, Mayor

Mayor Rummage stated when the Chief came on board with the Town, he was proceeding with State Accreditation because of the advantages that flow from such accreditation and he believes by the end of the year he will see considerable improvement in that area.

ADDITIONS TO THE AGENDA:

There were no additions to the agenda.

ADOPTION OF THE AGENDA:

Mayor Rummage called for a motion to adopt the agenda.

Motion by Mr. Kennedy to adopt the Town Council Agenda of October 9, 2008, second by Ms. King. With no objection from Town Council the agenda was adopted as presented. ***Mr. Ridgely absent from the vote. Motion Carried.***

APPROVAL OF THE MINUTES:

Mayor Rummage called for a motion to Approve the Minutes of the regular meeting of Thursday, June 12, 2008, the Special Meeting of Thursday, June 19, 2008 and the Special Meeting of June 26, 2008.

Motion by Ms. Payne to approve the minutes as presented, second by Mr. Lyburn. With no objection from the Town Council the minutes were approved as presented. ***Mr. Ridgely absent from the vote. Motion Carried.***

COUNCIL REPORTS:

BUDGET: Mr. Ridgely was absent from the meeting due to other obligations for accreditations.

STREETS AND ROADS: Mr. Kennedy reported that VDOT would be back in Town next week doing some pothole patching. Mr. Murphy and I met this morning to talk about the road issues and potholes, and sink holes. We have also talked with VDOT about using a piece of equipment that we have to tar and chip. The Virginia Department of Transportation can give us the materials to do that out of the Popes Creek installation. It is preheated so it is in a liquid form. Mr. Murphy and I are going to be going over easement issues and right-of-ways.

Mr. Murphy stated that they have had significant cutbacks in their budget from 5% to 10% and they are going to proceed with tar and chip and different layers of that for replacement of the asphalt.

Mayor Rummage responded just as long as we don't have crushed stone.

PLANNING & ZONING: Mr. Coombes stated he would give his report during the Planning Commission segment.

WATER & SEWER: Ms. Payne reported that the sub-committee that is reviewing the water and sewer fees met for the first time last week. The committee consists of Mr. Ridgely, Ms. Foulds, Ms. Grant and myself. We are trying to come up with a bottom line figure that is a combination of what is needed with the wastewater treatment plant and any other future needs over the next couple of years. Our next meeting is on the 17th and we will keep everyone informed. I have downloaded the section of the Town Code dealing with water and sewer fees and connection fees. I am going to start coming up with revisions to that section.

PUBLIC SAFETY: Mr. Lyburn cautioned everyone who owns a golf cart, to please stay off of Route 205 coming out of the Townhouse complex across from Beachgate Shopping Center because it is not allowed. The young teenagers out walking during the day need to stay within the crosswalks. It is football and basketball season and there are a lot of people and traffic out. I don't want anyone to get hurt. Please be aware of your surroundings.

Charlie Robertson from the Colonial Beach Volunteer Fire Department shared information on two important events. The first concern is developing the momentum for smoke detectors. We will begin to follow up on smoke detector installation. There will be a special open house on Tuesday, October 21st from 1 – 7 p.m. Our goal is from 1p.m. to 3 p.m. is to host school classes that are interested in tours of the station, viewing specialized equipment and then also be available for families later on. I am in negotiations with Spotsylvania County right now to borrow their fire safety house and so far it sounds positive, but it has not been confirmed. It involves the logistics of having the licensed people to hook up the vehicle. I will give you an update. It is going to be part of the open house, it is something for people to see. Our goal is to proceed with a grant to secure a similar but smaller unit to be housed here at the fire station.

COLONIAL BEACH POLICE DEPARTMENT: Chief Hawkins stated we have been looking at a number of locations for the possible future move of the police department. The latest one is from Ms. Gunderson and Ms. Knight proposing the use of their building at 509 Colonial Avenue. The Mayor is talking about a special meeting so I wanted to pass this out for your consideration. I met with the current owners and potential owners of Riverwood Apartments. They are looking at providing the police department \$40,000 per year in monthly installments to help provide security and help to put an officer in there. It would be difficult for us to fill that in that manner. If this comes through, I was going to propose using that \$40,000 a year and hire another officer who would be

detailed for that complex. If we had something to come in that was an emergency outside of Riverwood, he would be there and then go back to his duty station. The only issue is if at the end of the yearly contract they decided not to continue, of course we would have to void that position. Once I get it in writing I will bring it to you and you can determine which is the best way to go or do we even want to get involved with it. Because of the transition, I don't know how much further they will go on a long term contract, but I will certainly bring it up to see if they will do a two or three year.

Mr. Kennedy stated he wouldn't feel comfortable with anything less than 3 to 5 years.

Chief Hawkins stated we have started servicing the police vehicles at 4,000 miles now instead of 3,000 for a cost savings. Last spring I bought this before the Public Safety Committee when we had the situation of two officers out in the County. This is something that should be handled administratively and it was up to me and I made the decision to do it. One of the things I took into consideration was that, with these two officers, anytime I called due to a manpower shortage, they were on the way. They are very dedicated employees. One is in K-9 school right now. A take home car with a K-9 is a must because he has to get the dog to the house to put it in the kennel. Also when we need help, we need it yesterday. It hasn't changed our gas usage all that much and we made some adjustments in some other areas with the golf carts and the bicycles so I just wanted to submit that to you to let you know why we did it. If anyone has any issues with it, please let me know.

MAYOR'S REPORT: Mayor Rummage stated he wanted everyone to be mindful of the fact that he is very much interested in both of these positions being created as soon as the economy picks up. Number one, is a part time public relations person so that all of the good things that happen in this Town are publicized. We can't expect the press to cover everything and Town issues could be covered by hiring such an individual experienced in public relations. That position is badly needed by this Council. The second position that I think is extremely important is an onsite magistrate. One of the things that has bothered me for the past two years is the amount of time that it takes for our police officers to go down to Montross on all of the traffic tickets that are challenged. It takes an awful lot of time, professional time, away from their regular duties. If we had a substitute here, we could start out one day a week and the hearings could be here. It could be handled very easily. I realize that we are going to have to have cooperation from the judge of the court as well as Mr. Atkins. I talked to him about that and I want to continue to mention that and each one of us on the Council as well as the professional staff will continue to talk with Mr. Atkins and the judge. We would save an awful lot of money, an awful lot of time, an awful lot of gas. We would be so much better off for it. The other thing I want to mention is the delinquent water rates. The staff has been doing a great job and we have reached the point where we are going to have to shift gears a little. Ms. Payne and I will be meeting in the not too distant future and we will be proceeding on another track. Before the fiscal year is out, we will have made a dent. There is a pier on 529 Irving Avenue that we approved and come to find out, we are not the final approval. There are about 4 different permits that have to be obtained and I

don't know why that was brought here before those permits were obtained. We will raise that at the appropriate time.

INTERIM TOWN MANAGER: Ms. Foulds stated the activities for the last few weeks have been the continuation of the follow-up with citizens from our Public Works Department and other departments to include site visits to Riverside Meadows and Bluff Point. The Director of Public Works and I have been working with the wastewater treatment plant staff to discuss training, scheduling, performance appraisals and certification. Each component is being looked at with goals of upgrading the levels of our staff to increase the Department of Environmental Quality requirements. The liability insurance coverage and other details relating to the portion of the Town Center that are being requested by the Colonial Beach Artist Guild for their Second Friday Art Walk Display as one of their stops, I am ironing the final details out with the Virginia Municipal League insurance division and I should have a full report prepared for Council at the work session.

CHIEF FINANCIAL OFFICER: Ms. Grant reported the deposits to the Main Checking Account were \$1,158,803.72 and our balance as of 5 p.m. today and includes all encumbrances and all reserves are \$2,051,535.45. Staff operations include that we are currently processing the Land Book and preparing real estate and personal property bills which are for the November 5th mailing.

TOWN ATTORNEY'S REPORT: Ms. Erard handed out a report about the local share and what we pay for court appointed attorneys. On page 2, it says that we have to pay the fee and the way it works is that if someone is charged with a violation of a local ordinance and that person goes to court and they are found ineligible because of their income limit and a court appointed attorney is appointed, then that fee is assessed to the Town. The amount of the fee is also set forth and the rationale behind it is that if and when that person is convicted, then that person pays the fine and it is then remitted to the localities. In theory what we get billed we should be recouping as well in the court fines. Ms. Erard stated she had also been working on the Bright System financing documents. I have five issues about the documents and the first one is what is the term of the contract? The answer I got is 060 and that means 60 months. It didn't say that anywhere. It really has to set the tone of the contract so I am now in the midst of it and working my way through it. The MOU with Westmoreland County, I did provide comments back on that. It looks good and I appreciate the changes. There are a couple of statutes that need to be updated and I think it will be ready to go. I have also been working on delinquent account issues as well as the Boat Safety Fee Ordinance and the Cigarette Tax.

COMMISSION REPORTS:

PLANNING COMMISSION – Mr. Coombes reported the Planning Commission on Thursday, October 2nd accomplished a couple of things. We had a lengthy discussion and review of a request by Bryan and Vicki Coffman of High Tides to expand that restaurant and the first order of business was a request for them to vacate, and vacation does not mean give it away, of Dennison Street from Taylor to the Boardwalk. That discussion resulted in a unanimous recommendation to Council and the Council will have it shortly

to indeed vacate that street. In order for the restaurant to expand, at the same time there were a couple of conditions on it. The Dennison Street width that the Town owns is 40 feet. I think most people in Town know that is the portion beside High Tides is graveled and used as a parking area at the moment under which the Town has water and sewer lines. Mr. Coffman also indicated that he would like to purchase from the Town the lot over from Dennison Street which is vacant, and owned by the Town. The lot looking at the plat is 50'. He wants one of them nearest Dennison Street. He is asking to purchase a total of 90' on the water. His intent is to put an outdoor Tiki bar on that lot. The concern of the Planning Commission is that this is the only legal access the Town has to the water. Mr. Coffman agreed to give the Town easements and leave it as it is. We discussed moving the easement to 40' over onto the other lots, but he was willing to leave it where it is. Of course, Council indicated 3 or 4 different resolutions to get this all done. He is going to have to give the Town easements for the existing water and sewer underneath it. He stated that the reason he needs to move in this direction, is that with his ABC License, he cannot get another one. An owner cannot have two licenses next door to each other. If he owns the land and it is contiguous from his restaurant over from where his going to build, then it doesn't become a problem. We agreed and we tied the purchase of the 50' lot on the other side of the easement to the vacation, because both have to go at the same time so that we don't have the possibility of the easement, but he doesn't want to buy the other lot. I think there will be resolutions coming to Council in order to get this done. It does mark a milestone. Here is a successful restaurant and I was on Council when he came to build that restaurant. There were a lot of questions of whether or not he could make it, well he has made it and now for the first time in 50 plus years, we have a successful business asking the Town to expand on the Boardwalk. The other major item we considered was the revision to the parking ordinances. We have sent it to Council with unanimous recommendation. Most of what was done in that ordinance was to loosen up the parking availability with minimum requirements when you build something particularly for the resort commercial district. The consultant, Land Studio has asked that the Commission meet and hold a public forum on the Comprehensive Plan on October 23rd to which all of the Town citizens are invited. The Council is invited, and what we are going to do according to Land Studio is to briefly go over Chapters 1 & 2 for the revisions they have made and then get into Chapter 3, which is the Future Goals and Objectives for the Town which will take us immediately into the Future Land Use recommendations. That is what we want to hear from Council, other Commissioners and the general public. We want to hear their perceptions for future land use which means our future growth. Mr. Bird indicated of the 2,700 community questionnaires that were sent out, they received more than 500 back. That is about 18% or 19% which is well above the normal 10% you usually get. There will be a written document as to the findings and that will be distributed to everyone. We have yet another potential B&B coming on Irving Avenue. It is interesting that we are getting new B&B's in a very slow time.

OTHER AGENCIES:

BOARD OF SUPERVISOR'S REPORT: Mr. Roberson reported our meeting isn't until next Wednesday. The County has applied for a 1.3 million dollar grant to help with the Phase II sewer plant at Oak Grove which will impact the Town. The federal

government has told us that there was only \$8 million dollars in that fund and it all went to defunct after the hurricane. So we are not getting it which means at the County we have to decide whether to continue the project, figure out if there is another way to get some more money for it and how it will impact us. Our County Administrator is putting together facts and figures. We are going to try very hard to keep the project going and try to work around it. The Riverside Meadows paving, we don't know yet, but everything is on hold with the Governor's cuts today. There may be problems with salaries seeing as he wants to freeze the 2% raise for employees and now he wants to hold it off a year. We have to do some work with our State Senator. I would to thank our police department, the County and the Town of Montross also for their excellent help at the Montross Fall Festival.

COLONIAL BEACH SCHOOL BOARD: Mr. Looney reported the school board approved expenses for the month of October 2008, the non-salary expenses are under \$170,000. The total expenses in the month of September were under \$467,000 and the total expenses for the first quarter, July, August & September were under \$1,791,000. Mr. Trivett mentioned there were problems with the marquee at the high school and those are being taken care of. There have been questions about the use, the amount and type of use of the instant alert system the school system has those questions are being looked into. There are some problems with the resurfacing of the high school gym floor. The school board and the superintendent are united in our determination to see that situation is fully and completely corrected. We approved the purchase of a security camera for installation of the interior of the high school and one in the bus parking area outside for a total cost of \$6,000. The Chairman mentioned normally something like this could run as high as \$60,000. Mr. Looney asked to read a letter from Blaire Denson the Director of the 1st Century Learning Center which stated, "our after school program will be participating in the 9th Annual Lights on After School Nationwide Celebration of after school programs. We will be one of more than 7,500 sites across the Nation sending the message that after school is key to children's success and that we must keep the lights on and doors open after school. Parents, media, employers, neighbors and school officials have been invited to help us rally support for safe stimulating after school programs. We would like you to be part of our local celebration scheduled for Thursday, October 16, 2008 at 3:30 p.m. at Colonial Beach Elementary School. Our program is going to include ½ hour ceremony featuring Senator Richard Stuart as our keynote presenter. We will also be featuring student art work and have a musical presentation. The benefit for quality after school programs are clear, they support working families by insuring that the children are safe and productive when the school day ends. The after school programs make our communities stronger by involving students, parents, business leaders and volunteers. Quality after school programs will help our children to discover hidden talents as they grow academically and socially." The same day at 6:00 p.m. will be the annual homecoming parade. The following night will be the football game starting at 7:00.

PUBLIC HEARINGS:
ORDINANCE - #565 – CIGARETTE TAX

Mayor Rummage stated a couple of weeks ago, the Vice Mayor, Ms. King and the Town Manager and I paid a visit to Warsaw to review some of the programs that they have and how they handle them. We suspected that they have a local cigarette tax that filled in a void for their budget. As you know we have one in our budget. This is the reason why we came up with this proposal. It amounts to .25 cents a pack of cigarettes sold here in the Town. We raised the questions several different ways when we were there, what impact did this have on the local businesses and what was their reaction? The answer was none and none, so we figured if we had a hole in our budget, which we do, then this will be one way of helping us fill that hole.

Ms. King stated this will be a new source of income for the Town and we are trying to find another source of income so we don't have to raise real estate taxes or other taxes. This tax has been successful with not a lot of administrative work to be done. It has been successful throughout the state in many localities and I do not know why it hasn't been done here before, but I agree it can be done.

DONALD MASTRACCO - 113 THACKERY STREET

I am employed by Lonnie Phillips at the 7-11 in Colonial Beach. I have been living in Colonial Beach for two years now. I am a retired store manager from Giant Food and I have worked as a field consultant for 7-11 in Colorado. Obviously we have an interest in the cigarette tax. Just from the statements I have heard, there is a huge administrative expense maybe not to the Town, but to the people who sell the cigarettes. From what I read in the newspaper the taxes are to be purchased through the wholesale. Has anybody talked to any of the wholesalers who sell cigarettes like the convenience stores and the supermarkets? McLean Distribution is a huge company. We have an exclusive contract with them. There are things that need to be considered. Whenever you increase taxes, you decrease your revenue. Since this would be a new tax, that wouldn't be possible, but through my experiences in Colorado when they raised the State cigarette tax by a \$1.00 a pack in January 2006. January 2007 in Maryland the State cigarette tax was raised to \$1.00 a pack. The business I operate in Waldorf, MD, lost 40% of their cigarette business the first week and it has never recovered. Huge income was lost for that particular store. In the State of Colorado, cigarette sales were down 30%. I do know that it has a major impact on the income of the people who were selling the cigarettes. In my 46 years of retail experience, those people will buy their cigarettes somewhere else.

PETER FAHRNEY – 3419 RIVERVIEW DRIVE

Dr. Fahrney stated as a physician, I would be remiss in not taking the opportunity to tell what an immense financial burden the illness that is caused by smoking cigarettes causes. I think anything that our local community could do to discourage people particularly, young people from smoking is worthwhile. I understand the emotional and economic reasons for the tax either for or against the tax, but from a physician's standpoint I would support the tax if it will discourage smoking particularly in the young population.

BUD TRESSLER – 119 HAWTHORN STREET

Mr. Tressler stated he felt it was the wrong thing to do, .25 cents a pack is not going to make someone quit smoking. People are going to go out to Hall's and buy them. It goes

back to being business friendly again. You are putting another tax on the people who do sell them. They are going to lose the sales. People are going to start buying them on the internet or go out of Town and buy them. It is the wrong thing to do.

With no further comments, the public hearing was closed.

A brief recess was taken at this time.

PUBLIC COMMENT:

CHARLIE ROBERTSON – 15 FIRST STREET

Mr. Robertson stated after negotiations, I want to compliment the appearance of the small boat ramp off of Monroe Bay Avenue. It is the resource now for officially small boats like kayaks for a very usual mechanism. I appreciate the work that Public Works did. Last week, during the special meeting of the boat decals, assessment levy tax, someone very special was here that needs very special recognition. That person referenced the logo and I hope before that person relocates that the Council and the Town will consider something special to recognize her and her family.

DONALD MASTRACCO – 113 THACKERY STREET

This is my first attendance at the Town Council Meeting and I think everyone deserves a round of applause for your public service. Decisions are difficult and sometimes you get squeezed and are not sure about your decisions and I think everyone deserves credit for their public service.

MARY VIRGINIA STANFORD – STANFORD’S MARINE RAILWAY

Ms. Stanford stated you are talking about hiring someone to pick up the news and make sure it gets in the newspaper. You just need to call up the Chamber of Commerce and let them do it.

OLD BUSINESS:

AGENDA – #64-08

RESOLUTION – PARTIAL PAYMENT OF MONTHLY HEALTH INSURANCE PREMIUM FOR PAID EMPLOYEE OF THE COLONIAL BEACH VOLUNTEER FIRE DEPARTMENT

WHEREAS, the Colonial Beach Volunteer Fire Department employs a full time firefighter to staff its station during normal working hours; and

WHEREAS, the Town of Colonial Beach makes a yearly contribution to the Fire Department in support of its general operations; and

WHEREAS, said employee has heretofore been unable to afford health insurance for himself due to the \$500.00 per month premium; and

WHEREAS, the Fire Department has asked the Town to bear the premium costs for this health insurance coverage.

NOW THEREFORE BE IT RESOLVED, that the Town Council meeting in regular session Thursday, October 9, 2008 hereby approves a payment of \$500 per month to the Fire Department as financial support for securing health insurance coverage for this full-time employee.

BE IT FURTHER RESOLVED, that this additional financial support from the Town is specifically for the Fire Department's current salaried employee and will end upon the employment termination of said firefighter.

Mr. Coombes stated for a number of years, the Town has supported the salary of a full time paid fireman at the Volunteer Fire Department. It is the only department in Westmoreland County that has a paid individual and we did that 10 – 12 years ago because of the difficulty – the increase in fire emergency calls and we have the expectation that perhaps some of those calls couldn't be answered by the fire department so we put on a paid fireman to assure that the first engine company would leave the house. That was done a long time ago and at that point it was Teddy Trowbridge who was the paid fireman. Teddy left for health reasons and the insurance stopped when he left, but the new person Mike Worrell never got the insurance. We paid it back then and we need to pay it now. It is \$500.00 a month for single coverage and here is a man who has been on the job 4 or 5 years, a dangerous job and had no health insurance simply because his salary wasn't high enough that he could afford it. We were asked to continue the tradition that we established with Mr. Trowbridge.

Ms. Payne stated since this came to us after the budget had already been approved for the year, it puts us in a difficult position. I would like to encourage the next budget cuts around to start to look at these things ahead of time so we don't have to scramble after the fact to come up with these funds.

Motion by Mr. Coombes to approve, second by Mr. Lyburn.

Ms. King asked if there was a line item.

Mr. Coombes responded he could not answer that question.

Mayor Rummage asked if there are any funds available if this resolution is approved?

Ms. Grant responded that her and Mr. Ridgely are looking at line by line. We compare it against items from a revenue perspective from the downturn of the economy. We are looking at every single line item and that is exactly what Mr. Ridgely will be bringing back to the November work session.

Mayor Rummage stated he was ready to vote on it.

Mr. Kennedy responded he didn't see how we could.

Mayor Rummage asked to special order this resolution for the next work session.

Mr. Coombes asked for an explanation.

Mayor Rummage responded special order means it has to be on the agenda at a specific time.

Being no objection from the Town Council and a unanimous aye vote, Resolution - #64-08 was tabled to the next work session. *Mr. Ridgely absent from the meeting.* **Motion Carried.**

NEW BUSINESS:

ORDINANCE #565 ADDS TO CHAPTER 20, "TAXATION," OF THE COLONIAL BEACH TOWN CODE, ARTICLE IX, "CIGARETTE TAX," SEC. 20-110, "DEFINITIONS," SEC. 20-111, "LEVIED; AMOUNT," SEC. 20-112, "PREPARATION, SALE, ETC., OF STAMPS; DUTIES OF TREASURER GENERALLY," SEC. 20-113, "INSPECTION OF RECORDS, PREMISES, ETC.," SEC. 20-114, "SEIZURE AND DISPOSITION OF UNTAXED CIGARETTES, ETC.," SEC. 20-115, "OBLIGATION OF DEALERS AND AGENTS REGARDING STAMPS," SEC. 20-116, "PRESUMPTIONS BASED ON QUANTITY," SEC. 20-117, "PRESUMPTION BASED UPON STAMPS OR MARKINGS," SEC. 20-118, "DISPOSITION OF REVENUE," SEC. 20-119, "SALE OF CIGARETTES IN VENDING MACHINES," SEC. 20-120, "ILLEGAL ACTS," SEC. 20-121, "PENALTY FOR VIOLATION OF ARTICLE," SEC. 20-122, "EACH VIOLATION A SEPARATE OFFENSE." ORDINANCE #565 CREATES A NEW TAX OF TWENTY-FIVE CENTS (.25) FOR EACH TWENTY CIGARETTES. VIOLATIONS OF ORDINANCE #565 CONSTITUTE A CLASS 1 MISDEMEANOR ORDINANCE #565 IS CONSIDERED PURSUANT TO THE GRANT OF AUTHORITY CONTAINED IN CODE OF VIRGINIA, § 58.1-3830 ET SEQ.

BE IT ORDAINED that Chapter 20, "Taxation," of the Colonial Beach Town Code shall be amended to read, in part as follows:

"Article IX. Cigarette Tax

Sec. 20-110. 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:

Agent means every local dealer and other person who shall be authorized by the town treasurer to purchase and affix stamps to packages of cigarettes under the provisions of this article.

Dealer means every manufacturer, jobber, wholesale dealer or other person who supplies a seller with cigarettes.

Package means every package, box, can or other container of any cigarettes to which the internal revenue stamp of the United States government is required to be affixed by and under federal statutes and regulations and in which retail sales of such cigarettes are normally made or intended to be made.

Sale means every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the seller, as defined in this section, to any other person within the town.

Seller means every person engaged in the business of selling cigarettes who transfers title or in whose place of business title to any such cigarettes is transferred within the town for any purpose other than resale.

Stamp means the small gummed piece of paper or decalcomania to be sold by the town treasurer and to be affixed by the agent to every package of cigarettes; it shall also denote any insignia or symbol printed by a meter machine upon any such package under authorization of the town treasurer.

Treasurer means the town treasurer and every person duly authorized by him to serve as his representative.

Sec. 20-111. Levied; amount.

There is hereby levied and imposed by the town, in addition to any other taxes which may be or have been imposed, a tax to be paid and collected as provided in this article on each and every sale of cigarettes made in the town. The tax is to be paid by the seller, local dealer or other agent by affixing a stamp, or causing a stamp to be affixed to every package of cigarettes, in the kind and manner required in this article and at the applicable rates as follows: The rate or amount of tax levied or imposed on cigarettes shall be at the rate of \$0.25 for each 20 cigarettes or fractional part thereof.

Sec. 20-112. Preparation, sale, etc., of stamps; duties of treasurer generally.

(a) The town treasurer shall acquire, keep and sell necessary stamps to local dealers and other agents, the stamps to be of such denominations and quantities as may be necessary for the payment of the tax imposed in this article.

(b) In the sale of such stamps to a local dealer or other agent, the treasurer shall allow a discount of \$0.006 per stamp of the face value thereof to cover the cost which will be incurred by such dealer or agent in affixing the stamps to packages of cigarettes.

(c) The town treasurer may, from time to time and as often as he deems advisable, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. The treasurer is empowered to make and carry into effect such reasonable rules and regulations relating to the preparation, furnishing, sale and redemption of stamps as he may deem necessary. In redeeming stamps or making refunds for destroyed stamps, he shall not in any case refund more than 90 percent of the face value of such redeemed or destroyed stamps. He is further authorized and empowered to prescribe the method to be employed, the conditions to be observed, and any other necessary requirements not contrary to this article in the use of meter machines for printing upon packages of cigarettes an insignia to represent the payment of the tax and in lieu of stamps.

(d) In addition to powers granted in subsections (a) through (c) of this section, the town treasurer is further authorized and empowered to:

- (1) Prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of stamps;
- (2) Delegate his powers to agents or others, including the police officers of the town;
- (3) Act in any other matters pertaining to the administration and enforcement of the provisions of this article.

Sec. 20-113. Inspection of records, premises, etc.

The town treasurer, or his duly authorized agent, is empowered to examine books, records, invoices and papers related to purchases, sales, etc., of cigarettes, and to examine

all cigarettes in and upon any premises where cigarettes are placed, sold, stored, offered for sale or displayed for sale by a seller.

Sec. 20-114. Seizure and disposition of untaxed cigarettes, etc.

(a) If the town treasurer or his agent discovers any cigarettes subject to the tax imposed under this article, but upon which such tax has not been paid and upon which stamps have not been affixed or evidence of payment is not shown thereon by printed markings of a meter machine in compliance with the provisions of this article, then the treasurer or duly authorized agents or officers, any of them, may seize and take possession forthwith of such cigarettes, which shall thereupon be deemed to be forfeited to the town. Such cigarettes may, within a reasonable time thereafter, and after written notice is posted at the front door of the municipal building at least five days before the date given therein for sale, shall sell such cigarettes in the place designated in such notice.

(b) Any property, other than motor vehicles, used in the furtherance of any illegal evasion of the tax may be seized, confiscated and disposed of as provided in subsection (a) of this section. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

(c) The seizure and sale of any property shall not be deemed to relieve any of the persons of any other penalties provided in this article.

Sec. 20-115. Obligation of dealers and agents regarding stamps.

(a) Every local dealer in cigarettes and every agent appointed under this section shall purchase necessary stamps from the town treasurer to pay the tax imposed under this article and shall affix or cause to be affixed a stamp of the monetary value provided by this article to each package of cigarettes prior to delivering or furnishing such cigarettes to any seller who is not also an agent.

(b) Nothing contained in this section shall be deemed to preclude any dealer from authorizing and employing any agent to purchase and affix such stamps in his behalf or to have a stamp meter machine used in lieu of stamps to effectuate the provisions of this article.

(c) Stamps or printed markings of a meter machine shall be placed upon each package of cigarettes in such a manner as to be readily visible to the purchaser.

(d) It shall be the responsibility of every seller to determine that each package of cigarettes offered for sale shall have a proper stamp affixed thereto in compliance with the provisions of this article.

(e) If inspection by the agents of the town discloses unstamped or improperly stamped packages of cigarettes, the seller, when such cigarettes were obtained from a local dealer, shall immediately notify such dealer and upon such notification such dealer shall forthwith either affix to the unstamped or improperly stamped package, container or item the proper amount of stamps or he shall replace such package, container or item with others to which stamps have been properly affixed. If a seller, who is not also an agent, acquires or has in his possession unstamped or improperly stamped cigarettes, the seller shall forthwith notify the treasurer of such fact. The treasurer shall thereupon affix or cause to be affixed the proper stamps to such cigarettes. The cost of such stamps at face value shall be advanced by such seller.

(f) The treasurer, by proper rules and regulations, may require every local dealer, agent or seller to cancel stamps upon all packages of cigarettes in his possession.

(g) Every local dealer and seller shall maintain and keep for a period of at least two years such records of cigarettes received and sold by him as may be required by the treasurer; such records shall be made available for examination in the town by the treasurer upon demand, and the means, facilities and opportunities for making any such examination shall be made available at all reasonable times.

Sec. 20-116. Presumptions based on quantity.

Cigarettes found in quantities of more than six cartons within the town shall be conclusively presumed for sale therein and may be seized and confiscated if:

(1) They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of cigarettes so transported, or they are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part;

(2) They are in transit and are accompanied by a bill of lading or other document indicating:

a. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such cigarettes on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or district of destination has been paid and the products bear the tax stamps of that state or district; or

b. A consignee or purchaser in the commonwealth but outside the town who does not possess a state sales and use tax certificate, a state retail cigarettes license and, where applicable, both a business license and retail cigarettes license issued by the local jurisdiction of destination; or

(3) They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subsection shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the town that those cigarettes are temporarily within the town and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.

Sec. 20-117. Presumption based upon stamps or markings.

If any package of cigarettes is found in the possession of a seller without proper stamps or authorized printed markings thereon, and the seller is unable to submit evidence establishing that he received such packages, containers or items within the immediately preceding 48 hours, and that he has not offered the same for sale, then it shall be presumed that such packages, containers, or items are being kept in violation of the provisions of this article, and the seller shall be subject to the tax and a penalty in the amount of 50 percent thereof, even though such seller is also an agent.

Sec. 20-118. Disposition of revenue.

Revenue derived from the tax imposed in this article shall be deposited by the town treasurer to the credit of the general fund of the town for utilization for such legal purposes as the council of the town may from time to time determine.

Sec. 20-119. Sale of cigarettes in vending machines.

(a) Any cigarettes placed in any coin-operated vending machine shall be presumed for sale within the town. Any vending machine located within the town containing cigarettes

placed so as to not allow visual inspection of the town stamp through the viewing area as provided for the vending machine manufacturer shall be in violation of this article.

(b) Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the town manager or his designee. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties provided in this article.

(c) In lieu of seizure, the town manager or his designee, may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

(d) All cigarette vending machines shall be plainly marked with the name, address and telephone number of the owner of the machine.

Sec. 20-120. Illegal acts.

It shall be unlawful and a violation of this article for any dealer or other person liable for the tax to:

(1) Perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof, or to fail or refuse to perform any of the duties imposed under him under the provisions of this article or to fail or refuse to obey any lawful order which may be issued under this article;

(2) Falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps;

(3) Sell, offer for sale or authorize or approve the sale of any cigarettes upon which the town stamp has not been affixed;

(4) Possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty upon which the town stamp has not been affixed;

(5) Transport, authorize or approve the transportation of any cigarettes in quantities of more than 60 packages into or within the town upon which the town stamp has not been affixed, if they are:

a. Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported;

b. Accompanied by a bill of lading or other document which is false or fraudulent in whole or part; or

c. Accompanied by a bill of lading or other document indicating:

1. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax on the jurisdiction of destination has been paid and such cigarettes bear the tax stamps of the jurisdiction; or

2. A consignee or purchaser in the state but outside the taxing jurisdiction who does not possess a state sales and use tax certification, a state retail tobacco license and, where applicable, a business license and a retail tobacco license issued by the local jurisdiction of destination;

(6) Reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or

(7) Remove from any package any stamp with intent to use or cause the package to be used after such package has already been used or to buy, sell or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had therefore been used for evidence of the payment of any tax prescribed by this article or to sell, or offer to sell, any stamp provided for in this article.

Sec. 20-121. Penalty for violation of article.

Any persons violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor. Any fine and/or imprisonment pursuant to conviction of a Class 1 misdemeanor shall not relieve any such person from the payment of any tax, penalty or interest imposed by this article.

Sec. 20-122. Each violation a separate offense.

The sale of any quantity or the use, possession, storage or transportation of more than 60 packages of cigarettes upon which the town stamp has not been affixed shall be and constitutes a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.”

Mr. Kennedy stated he had not seen any data for the revenue coming in but revenue will be leaving the Town. With that in mind, I have hard time accepting this and there are too many “ifs” in it. The complaint that I am getting, the local stores have other monies that are spent there. When someone comes in to buy a pack of cigarettes and get gas, they get other things, are they going to start taking that business elsewhere?

Mr. Coombes stated the businesses are not going to leave, but I don’t know how you will get a handle on it. I have no idea.

Mayor Rummage stated we do have a hole in our budget and I do know we have to fill it.

Ms. Payne stated she understood what Mr. Kennedy was saying, but people who walk to the 7-11 or Get & Zip or take their golf cart or ride their bikes, they are not going to be able to go elsewhere for one pack of cigarettes. If it were a \$1.00 a pack, then it may make a little more difference. I don’t see that they are refusing to change their habits for .25 cents.

With no further comments on Ordinance #565, Mayor Rummage asked for a motion.

Mayor Rummage called for a vote. Ms. King **aye**, Ms. Payne **aye**, Mr. Kennedy **nay**, Mr. Coombes **aye**, Mr. Lyburn **aye**, Mayor **aye**, motion carried and **Ordinance - #565 Cigarette Tax was Approved. Mr. Ridgely absent from the vote. Motion Carried.**

AGENDA – #81-08

RESOLUTION – AMENDMENT TO FY 08-09 BUDGET FOR POLICE DEPARTMENT EXPENDITURES

WHEREAS, the warranty has expired on police car number 9; and

WHEREAS, an unexpected repair had to be made to replace the transmission; and

WHEREAS, the cost to repair the transmission totaled \$2,732.00 and there are not sufficient funds in the Repairs and Maintenance line item of the Police Department budget to cover the expense.

THEREFORE BE IT RESOLVED, that the Town Council meeting in regular session, Thursday, October 9, 2008 hereby agrees to transfer \$2,732.00 from the Contingency line item 11010 – 5836 to line item 31100 – 6007 Repairs and Maintenance of the police department budget.

Chief Hawkins explained we had a replacement that had to be done to a transmission on a car that was out of warranty. Obviously we were trying to keep the budget as close to operation figures and not put any extra on it, so there is no money to pay for it. I am asking for \$2,732.00 be transferred back to my budget because that transmission repair has now made it impossible to do any other maintenance to the vehicles for rest of the year which we will have a lot of them coming in. This was something we couldn't predict.

Ms. Payne asked if this was a contingency line item?

Chief Hawkins responded that Mr. Ridgely has picked the line item.

Ms. Grant responded that it is the Council Contingency line item.

Mr. Coombes stated he wasn't on Council when this budget was made and I understand the need to do this, but maybe the Council Members who were here for part of this budget, can tell me about this. I have never been involved in a budget that doesn't have contingency funds within the department somewhere for these kinds of things. It looks like when these things happen for the rest of the year, not only the police department but elsewhere, we are going to be doing this often.

Ms. King responded at the last budget meeting, I recall, it was decided that Council would have a lot of input. A lot of things were held back and put in Council contingency to meet the needs of other departments.

Mr. Coombes as I recall the Council contingency was like \$150,000 and it was set up for this very thing.

Mayor Rummage called for a motion.

Motion by Mr. Kennedy to approve, second by Ms. King.

Mayor Rummage called for a vote on Resolution - #81-08. Ms. Payne **aye**, Mr. Coombes **aye**, Ms. King **aye**, Mr. Kennedy **aye**, Mr. Lyburn **aye**, Mayor **aye**, motion carried and the **Amendment to the FY 08-09 Budget for Police Department Expenditures was Approved. Mr. Ridgely absent from the vote. Motion Carried.**

CLOSED MEETING:

There were no issues for Closed Meeting.

OTHER MATTERS:

Mr. Kennedy stated he had an item for the work session and he met with the people at Eleanor Trailer Park and there were issues they brought up. One of them was about trees that were hanging over top of some of the trailers. R.C. Tree service has given Mr. Murphy an estimate to get those trees out of there. The figure was \$950.00. The tree-trimming budget was shot. It throws us right back into the same thing about contingency money, also there is a tree on Lafayette Street that needs to be trimmed - \$250.00.

HALLOWEEN SAFETY PROCLAMATION

WHEREAS, Friday, October 31, 2008 is Halloween; and

WHEREAS, large numbers of children are expected to be “trick or treating” on Halloween; and

WHEREAS, the Town is concerned with the safety of the children.

BE IT HEREBY PROCLAIMED, that in the interest of safety “trick or treating” should be carried out on Friday, October 31, 2008.

BE IT FURTHER PROCLAIMED, that all adults are urged to watch out for the safety of children “trick or treating” for Halloween.

BE IT FURTHER PROCLAIMED, that all drivers operate their vehicles in a careful and cautious manner.

BE IT FURTHER PROCLAIMED, that “trick or treating” be limited to the hours of 5:00 p.m. to 9:00 p.m.

BE IT FURTHER PROCLAIMED, that all parents are urged to keep a careful eye on the children while “trick or treating”, and that they check their children’s candy for safety.

BE IT FINALLY PROCLAIMED, that all children and their parents have a happy and safe Halloween.

FREDERICK C. RUMMAGE, MAYOR

Motion by Mr. Lyburn, second by Ms. Payne. A unanimous vote approved the Halloween Proclamation. ***Mr. Ridgely absent from the vote. Motion Carried.***

Chief Hawkins stated that as a part of the grant that we applied for and got, this year, we were required to do some special enforcement on Route 205 for seat belts. Prior to the

enforcement we do a survey by watching the traffic and report usage of seat belts. Once we are finished with the enforcement, we do the same thing to see if there was a change and we forward those figures to the State. They presented us with these awards and this is for the citizens of the Town using their seat belts. In 2008 – Colonial Beach - High Seat Belt Use and 2008 – Most Improved Seat Belt Use. That is great that the citizens have taken that safety step and are using their seat belts.

MOTION TO ADJOURN:

Motion by Ms. King to adjourn the meeting, second by Mr. Kennedy. With no objection from Town Council, the regular meeting of Thursday, October 9, 2008 was adjourned at 8:20 p.m. at the Colonial Beach Town Center. ***Mr. Ridgely absent from the vote. Motion Carried.***

Mr. Roberson requested that the meeting be reconvened to ascertain if there was a motion and a second made for the adoption of Ordinance #565 – Cigarette Tax.

The Town Council meeting reconvened at 8:25 p.m. and Mayor Rummage called for a motion to approve Ordinance - #565.

Motion by Ms. Payne to approve, second by Mr. Lyburn.

Mayor Rummage called for a vote. Ms. King **aye**, Ms. Payne **aye**, Mr. Kennedy **nay**, Mr. Coombes **aye**, Mr. Lyburn **aye**, Mayor **aye**, motion carried and Ordinance - #565 Cigarette Tax was Approved. ***Mr. Ridgely absent from the vote. Motion Carried.***

The meeting was adjourned.

Respectfully submitted:

Mary Mendenhall,
Deputy Clerk

Transcribed by:
Barbara A. Goff,
Town Clerk

Frederick C. Rummage,
Mayor

