



TOWN COUNCIL
Special Meeting
Cape Charles Civic Center
via Electronic Communications
April 16, 2020
6:30 PM

This Special Meeting of the Cape Charles Town Council was held by video conference in accordance with Code of Virginia § 2.2-3708.2, subsection A.3, resulting from Governor Northam's March 12, 2020 declaration of a state of emergency for the Commonwealth of Virginia arising from the Novel Coronavirus (COVID-19) pandemic. It was deemed impractical and unsafe to assemble physically due to the highly contagious nature of COVID-19.

The purpose of this meeting was to discuss the issue of short-term / vacation rentals and review recommended adjustments for the fiscal year 2020 budget. An audio recording was made of the meeting, and the meeting was also live-streamed on Facebook, as well as video-taped for viewing from the Town's website after processing. Public comments were accepted in writing prior to the meeting. Viewers could also submit their comments via Facebook Live and emails to the clerk.

At approximately 6:30 p.m. Mayor William "Smitty" Dize, having established a quorum, called to order the Special Meeting of the Town Council. Physically present at the Civic Center were Town Clerk Libby Hume and Community Relations Manager Jennifer Lewis. In attendance via Zoom were Mayor Dize, Vice Mayor Bennett, Councilmen Bannon, Buchholz and Grossman, Councilwomen Burge and Holloway, Town Manager John Hozey and Treasurer Deborah Pocock. There were no members of the public physically in attendance.

PUBLIC COMMENTS (AGENDA ITEMS ONLY):

Town Clerk Libby Hume read 18 comments submitted in writing prior to the meeting. (Please see attached.)

SPECIAL MEETING ORDER OF BUSINESS:

A. *Short-Term / Vacation Rentals and Enforcement:*

Town Manager John Hozey stated that following Council's adoption of a declaration of local emergency on March 30, Mayor Dize issued a formal request for all short-term rental operations to cease until state guidance eased restrictions on travel, currently set for June 10. Most of these businesses had voluntarily complied. It was unfair that businesses who were doing the civically responsible thing were taking a financial hit while those irresponsible businesses continued to rent their units and profit at the expense of public safety. Council requested the preparation of an ordinance to address this issue. The proposed ordinance was developed and cleared by legal counsel and declared defensible. It included hotels and bed and breakfasts (B&Bs), but not those with a property interest such as second homes and timeshares with an ownership interest. Those in violation of the ordinance would be charged with a Class 3 misdemeanor which was punishable of a fine up to \$500 per day. Enforcement would not be easy, and the Town would rely on tips as we didn't have the manpower to go to each business to check their status. Residents were requested to call the police department to report violators.

Mayor Dize read Ordinance 20200416.

Motion made by Councilman Grossman, seconded by Councilwoman Holloway, to adopt Ordinance 20200416-An Ordinance Temporarily Closing Short-Term Rental Operations in the Town of Cape Charles, Virginia, in Order to Protect the Public Health and Safety by Preventing the Further Spread of the Coronavirus (COVID-19).

There was much discussion as follows: i) Mayor Dize stated that the Town needed to do whatever it took to ensure all violators were identified and that all were treated equally; ii) Staff didn't know the current number of property owners in violation, but were hearing about violators from the citizens; iii) The ordinance's intent was to mandate no occupancy during the stay-at-home period, not to stop property owners from advertising or accepting reservations for a future date after the stay-at-home orders were lifted by the Governor. Councilwoman Holloway added that she had been accepting reservations at her B&B but informing the customers that things may change based on the status of the stay-at-home order; iii) Councilwoman Burge expressed her pleasure with the number of comments submitted adding that she thought about Mr. Stephen Fox's comments about the possibility of property owners taking longer term rentals without penalties for early cancellation. There wouldn't be anything the town could do regarding this issue; iv) Councilwoman Burge stated that she was in favor of protecting everyone but wondered if the Governor's executive order included a violation that could be used by the Town. John Hozey responded that there was a violation but the enforcement authority was for the State Police, not the Town. Mayor Dize added that it was considered a Class 1 misdemeanor; v) Councilwoman Burge stated that to enforce, a summons had to be written and the case would have to get on the court docket. Currently the general district court was only hearing emergency cases such as protective orders, etc. It would be a while before the case would go to court which meant that the penalty wouldn't make people leave. She was concerned about the lag in time from summons issuance to the court date; vi) Vice Mayor Bennett didn't share Councilwoman Burge's concern adding that this was a unique situation and Council needed to take action to protect the citizenry of Cape Charles. People wouldn't stay in Town until a judge was able to hear their case in court. Once a citation was issued, the Town would ask the renters to leave. John Hozey clarified that the penalty would be assessed to the property owners, not the renters; vii) Councilman Buchholz commented that there were so many variables in how COVID-19 could be transmitted, and this ordinance wouldn't solve the issue. There were 107 units in his neighborhood and two-thirds were probably rentals. There were a lot of second homeowners here and they could let their friends use their house without paying rent. How could the Town prove the people coming here were paying rent?; viii) Several Council commented that the Town couldn't solve every issue but something needed to be done to protect the citizens; ix) The bigger issues were with visitors from other states violating their stay-at-home order to come here. Driving around the Town, you see mostly out-of-state license plates; x) All short-term rental properties were required to obtain annual inspections and any short-term rental properties without a current inspection should be shut down immediately and if renting, needed to be reported to the State Police for enforcement under the Governor's order; xi) Under the criminal code, the penalty was the discretion of the judge, not to exceed \$500 per offense or per day based on the ordinance; xii) Councilman Buchholz expressed his concern about the federal mandate of no evictions and if this would fall under that mandate. It was agreed that the federal mandate was for long-term rentals with a lease agreement not transient rentals; xiii) In addition to the regular channels of communication (website, e-Notifications, Nixle, Facebook) notices would be mailed to utility bill customers; xiv) A warning would be issued for each first time violation, followed by citations for each subsequent offense; xv) From the comments received from the residents, for this meeting and previously, requesting the Town to do something, this was a step that had to be taken. Council's first priority was the safety of its residents; and xvi) Mayor Dize clarified that this ordinance covered properties within the town limits, not all of the 23310 zip code.

The motion was approved by majority vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Burge, no; Grossman, yes; Holloway, yes.

B. *FY 2020 Recommended Budget Adjustments:*

John Hozey stated that the Town was feeling the effects of COVID-19 as well as businesses and residents with lost revenue. The budget that was adopted for this fiscal year (FY) would not be realized since a significant portion of the Town's revenue was from business-related taxes. Treasurer Deborah Pocock went through the FY 2020 budget and identified expected revenue shortfalls and proposed expenditure adjustments to maintain a balanced budget through June 30. Normally the town manager would make minor budget adjustments and report back to the

Council, but the magnitude of these adjustments made it appropriate to obtain formal Council concurrence. Council reviewed the proposed adjustments amounting to \$201,898.

Motion made by Councilman Buchholz, seconded by Councilman Grossman, concurring with the proposed budget adjustments.

There was discussion as follows: i) A bill was being introduced to provide aide to towns with populations of less than 5K; ii) Vice Mayor Bennett commented that this was a significant budget shortfall for a town that historically had not had any extra money. The cuts represented a big sacrifice for a lot of people, and he appreciated that this could be done. The entire situation was a big loss for the town; and iii) Councilwoman Holloway noted that staff contacted Cape Charles Main Street (CCMS) regarding the amount to cut from their funding. She appreciated being contacted to get their input. There was a good working relationship between the Town and CCMS. With the \$14K reduction in funding, some projects won't come to fruition this year. Councilman Buchholz added that CCMS lost a \$10K grant from the Virginia Tourism Corporation this year as well.

The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Burge, yes; Grossman, yes; Holloway, yes.

Mayor Dize announced that this would be Councilwoman Burge's last meeting adding that he first met her 15 years ago when he was hired as the harbor master and she was leaving her position as town manager. Councilwoman Burge was one of the smartest, well thought people he had met in his life and thanked her for all her years of service to the Town. He knew she would continue her excellent public service as a judge.

Councilwoman Burge stated that it had been an honor to be appointed to the Town Council a couple of years ago to fill a vacancy. She appreciated the opportunity. This was a bittersweet moment. She was happy to move on to another tremendous opportunity. She was hoping for the chance to get together to celebrate more officially in the future. There were a lot of good people in the Town and good staff to keep things going. She was happy that this Council had been able to set strategic priorities which needed to be reviewed as part of the budget process. She was glad that John Hozey was hired and thankful to have Debbie Pocock and Libby Hume as well as the rest of the Town's staff. She appreciated all they did and was honored to have served our Town.

Motion made by Vice Mayor Bennett, seconded by Councilwoman Holloway, to adjourn the Town Council Special Meeting. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Burge, yes; Grossman, yes; Holloway, yes.

The meeting adjourned at 7:50 p.m.

Mayor Dize

Town Clerk

**Comments Provided in Writing
April 16, 2020 Town Council Special Meeting**

Janice Korleski

Subject: Weekly rentals, VRBO, HOMEAWAY and ABNB

In my morning walks, I have noticed several vacation rentals occupied by out of state renters. My understanding was that vacation rentals would not be allowed during the "stay at home" mandate. And also in a letter from our mayor.

It is obvious this is not being monitored by our town officials.

My concern is these out of towners are putting a strain on our community. Food Lion cannot keep shelves stocked with the necessities for full time residents. In addition, do we know if these visitors are free of the virus? If they should become ill and require hospitalization this would put undue strain on OUR healthcare system. Riverside only has 2 ventilators.

It is my hope that the town council and mayor will halt all vacation rentals until the stay at home mandate is lifted.

Thank you for your consideration on this matter.

Janice Korleski

Margaret Van Clief, 215B Tazewell Avenue

Sent: Wednesday, April 8, 2020 4:07 PM

Subject: In support of limited visitor travel to Cape Charles

I appreciate the difficult choice and moves the Town Council and Mayor have made to discourage tourist travel to Cape Charles at this time. I agree that it is in the best interest of our vulnerable community, by which I mean Cape Charles and ESVA in general, to restrict travel from other areas as much as possible. I'm concerned when I see people on social media stating that they have second homes here, and that they should be allowed to visit because they pay taxes here. My worry here is not so much that they may come, bringing their own groceries and supplies, and keep to themselves in their own home, as we are all doing. It's the idea that paying taxes is what makes that okay. The virus doesn't care about taxes. It cares about social distancing and person-to-person transmission. So, I am not suggesting that these people should not be able to visit their properties, but I would like to see the town issue an official statement regarding the appropriate way to do so. I would also like to see stronger wording regarding whether vacation properties should be available for rent at this time. There are vacationers in a cottage just down the block from me right now.

Thank you for your time and for all y'all are doing during all of this. You are much appreciated!

Best,
Margaret Van Clief

Sent: Wednesday, April 15, 2020 12:42 PM

Subject: Re: In support of limited visitor travel to Cape Charles

I'd also like to submit that I am in favor of making it a Class 3 misdemeanor to operate vacation rentals for as long as the Governor's orders are in effect.

Thank you!
Margaret Van Clief

David Gay

Subject: Temporary Suspension of Rental Units in Cape Charles

Dear Council Members:

I applaud the effort of the Council to keep the citizens of Cape Charles safe during the current Pandemic. It is a good idea to suspend all seasonal rentals until the Governor lifts the current restrictions. If we all follow the rules now, we will be able to get back to business as soon as possible. Thank you.

Jo Ann Bawiec, Strawberry Street

Subject: Support

I fully support the town taking further action to eliminate short term rentals and making it a Class 3 misdemeanor for those in violation. Enforcement is key.

This is a difficult time for everyone, and I believe those that are continuing to rent their properties are doing so selfishly and putting our small community at greater risk. Community spread is the number one factor in propelling Covid-19. It's frustrating to see out of town license plates from states that are known hot spots for the virus. Even in state visitors are putting residents at an unnecessary risk.

I appreciate that so many property owners of rental properties ceased operations before the request was made by town officials. It's not fair that some have chosen to ignore the initial request to cease rentals and risk the well-being of our community.

Thank you.

Jo Bawiec

Cathy Buyn, Cheriton

Subject: Out of Town Visitors Comments

As a resident of Cheriton I am greatly concerned about the number of out of state license plates in the Cape Charles Food Lion parking lot. While I understand that tourism is a critical part of the Cape Charles and Northampton County economies, allowing 2nd homeowners and renters to needlessly expose full time county residents is irresponsible.

Given the limited supply of essential items on local store shelves local residents should not have to compete with visitors for groceries.

Stay at home means stay at your full time residence. I'm not even traveling across the county line at this point.

The majority of 2nd homes and vacation rentals may fall within the town limits, but the potential danger extends beyond the town. I urge the town to address this issue aggressively to protect all of the residents of Northampton County.

Respectfully,

Cathy Buyn

Lori Smith

Subject: 4-16 meeting

I completely support the ordinance that would make it a Class 3 misdemeanor to operate [vacation] rentals...for as long as the Governor's executive orders remain in effect.

Katherine Hardy Reid, 120 Creekside Lane

Subject: Rentals in Cape Charles during stay at home executive order

Town Council is holding a special meeting on Thurs, 4/16, [6:30 pm] to consider an ordinance that would make it a Class 3 misdemeanor to operate [vacation] rentals...for as long as the Governor's executive orders remain in effect.

As a resident of Cape Charles, I would like to express my support for this ordinance prohibiting rentals and fining those who break the ordinance. I am very upset at the complete economic devastation we are seeing as a result of the Covid19 virus and returning to normal has to be a priority. Research shows that preventing the spread of the virus by staying at home order is currently our best defense and our best way to get out of this situation quickly. I very much want there to be a summer season in Cape Charles. In order to get there, we must follow the Governor's executive order.

I am very unhappy to see anyone benefiting at the expense of the folks who are following the current guidelines. This inequality cannot be allowed to stand. Either we let everyone rent, or we let no one rent, but an in between state is not fair.

Additionally, I am sick to think that a visitor could bring the virus to our small, resource constrained area. Our rural health system is amazing, and so far they are not overwhelmed and are doing a great job taking care of us here on the Shore. We need to keep it that way.

Working together we can be ready to reopen as soon as it is allowed. Having anyone bend the rules to their favor, no matter what their intentions, in one of the worst pandemics in memory cannot be accepted.

Thank you to everyone in the town government and on the town counsel for your leadership in this difficult time.

Katherine Hardy

Anna Lee

Subject: Public comment for 4/16 meeting - Anna Lee

Dear Mayor, Town Council and Town Manager:

I absolutely support an ordinance that would make it a Class 3 misdemeanor to operate a short term rental unit in Cape Charles while the Governor's Executive Order remains in effect. I also hope that our Police Department will have a list of all TOT Tax property addresses so that they can monitor activity, and that a Tip Line will be made available so that citizens can report rental properties in use.

It's disappointing (to put it politely) that some members of our community have prioritized a short term financial gain over their own health and the health of their friends and neighbors.

Thanks to all of you for your continued hard work to keep our Town safe!

Sincerely,
Anna Lee

Stephen K Fox

Subject: Proposed Ordinance to Regulate Short Term Vacation Rentals and Enforcement

I am writing to express concern about the haste of adopting the proposed ordinance to prohibit short term vacation rentals in the Town and to enforce the prohibition by creating a Class Three Misdemeanor (maximum fine of \$500).

While it is understandable that there is heightened concern surrounding the pandemic created by the Corona Virus, I do not believe that such action is justified or may even be considered invalid for several reasons. Further research may be required to clarify some of the issues surrounding this proposal. The questions raised include the following:

1. Does a vacation rental introduce more persons into a housing unit which is already zoned residential and could be occupied by a family of several persons; a vacation rental does no more than fill the space, albeit perhaps on a rotational basis introducing different persons.
2. Does the Town Council have legal authority to take the action against persons who, finding themselves vacationing in Cape Charles and renting, must observe the identical regulatory restraints already in place. For example, the Council has authority to close the beach and public park to recreational use; the shops are virtually all closed. These situations may in fact deter vacation rentals without the necessity of Council action.
3. Related to the concerns raised in question 2 above, is the question of why the Town would undertake creating a different class of persons known as vacation renters, when, in fact, there is no regulation of permanent rentals. One could evade the reach of the proposed ordinance by renting for a long term (however defined) and then have the parties invalidate the remaining term of the agreement to rent. Also, are B & B rentals and hotel rentals excluded from the proposed ordinance?
4. Although I have not researched this topic in any great detail, it occurs to me that the proposed ordinance may violate provisions of the U.S. Constitution which prohibits enacting legislation which affects the sanctity of contracts, known as the "Contracts Clause" of the U.S. Constitution.
5. Lastly, is the Town prepared to underwrite the possible expenditure of public funds that may be necessary to pay for the taking of private property without just compensation. In effect, the Council action may be deemed to be a "taking of property" (a so-called "condemnation of property") for public purposes.

Thank you for your consideration of the issues set forth herein. I think caution and restraint should be observed. I am not a renter of vacation properties and have no stake in the financial results of such a prohibition but I believe the proposed action should be viewed in the context of the rights of the property owners who engage in what has become part of the economic engine of Cape Charles.

Respectfully submitted,
Stephen K. Fox
Attorney at Law

Mike Shepherd

Subject: Short term rentals

If the town enforces the short term rental ban, will we be refunded our business license fees?

Susan Eidam

Subject: 4/16 special mtg

Thank you, staff, for the swift response in addressing this issue.

One additional aspect of the short term rental is that of the vacation property owner who is complying by not renting but instead visiting here with their families because their investment property is now vacant. In the past 2 weeks, I have spoken with 3 families that have said they are going back and forth from NOVA to keep their kids busy and because they usually don't get to come here because they have it rented.

If there are to be consequences for vacation owners who allow others to use their houses, the same consequence should apply to owners themselves who don't stay home in their primary residence but visit their property here.

Thank you.

Sincerely,
Susan Eidam

Brent Carpenter

Subject: Upcoming vote on rental ordinance.

Good day.

I believe the town council is making a wise and prudent move to put a hold on the short term rentals of homes and rooms in CCVA, and I support the proposed ordinance.

Though I understand this will affect the owners and businesses bottom lines, I believe it is something that, as unfortunate as it is, must be done.

Thank you
Brent Carpenter

Libby Gray

Subject: Ordinance regarding rental properties

I vigorously support the proposed ordinance requiring ALL rental property owners (and managers and realtors) to fully and without exception follow the stay-at-home [and all other] directives of the Governor of Virginia until the current health crisis has passed.

I commend our town management for recognizing those who flaunt public health guidelines for profit should not be permitted to selfishly endanger others.

Libby Gray

Patsy Harris, 527 Walbridge Bend

Subject: COVID update

I would like to comment that the idea of making it a misdemeanor for rental property owners to rent their properties is a huge overreach. The state has closed all recreation and there are no gathering opportunities due to state rules so what's the harm in having folks rent homes here. How can you make it a crime for people to use their property for the purpose it was intended. If this is allowed, where does all of this end?

Patsy Harris

Jim Wood

Subject: STR proposed ordinance

Honorable Mayor and Members of Council:

I would urge caution as you deliberate the proposed ordinance shuttering short-term rentals (STRs) through June 10.

Through several entities, we have purchased derelict properties in town and have renovated them, dramatically increasing property values. We have hired local vendors and paid substantial transient occupancy taxes. Also, let me be clear that in February we voluntarily suspended renting through mid-June.

The proposed ordinance is not equitable in that it allows hotels and time shares to operate. I'm unaware of any evidence indicating that hotels present a lesser risk of the transmission of disease than a single-family home, especially given that hotels encourage the congregation of unrelated people unknown to each other, further increasing the potential of exposure.

Also, while the town is collecting \$100.00 inspection fees for STR properties, it is not inspecting them which is a de facto ban. Section 18-5 of the town code requires such inspections under the penalty of up to \$3000.00 in fines, so a refusal of the town to inspect means that many STRs cannot legally operate while hotels can.

As you can see from your projected reductions in revenues from meals, business and transient occupancy taxes, STRs are an extremely important part of the local economy. And realistically, no one is travelling in any great numbers and most responsible STR operators, like us, have suspended rentals for the foreseeable future. It appears that hotels in town have voluntarily closed their doors, but could re-open without any notice or permission. I would suggest that rather than criminalizing the rental of property, you encourage and incentivize private property owners to voluntarily comply.

However, if you feel that it is still a threat, then treat all transient occupancy in town the same way and close hotels and time shares with the same penalties. To do otherwise is not fair or equitable and puts local government in the position of favoring one business over another.

We're all in this together!

Jim Wood

John Wengler

Subject: Re: STR proposed ordinance (In response to email submitted by Jim Wood – Please see above.)

I agree with you.

Good job!

Chuck Little, Cape Charles Vacation Rentals

Subject: April 16 Council Meeting

My name is Chuck Little and I am one of the owners of Cape Charles Vacation Rentals at 307 Mason Avenue. My company has been complying with the Council's request to cease short term rentals within the Town until June 10 and has been issuing 100% refunds to the many renters that had already booked reservations prior to the current restrictions. At the present time we are not taking any new reservations for check-in dates prior to June 11 and will adjust as restriction dates are modified.

I am, however, discussing 3 month rentals with individuals that are seeking places while they are on the shore for employment, including a healthcare worker that will be working at Riverside Shore Memorial. I have not done the research, but I believe the Town considers only occupancies of less than 30 days to be short term rentals. I assume the purpose of tonight's discussion is to approve an ordinance to codify the restriction of short term rentals during the period of the governors declared state of emergency and travel restrictions. As such, I trust the restrictions will be placed on short term rentals and not on particular types of business entities. I would also like to hear from Council how the Town plans to police compliance and enforce such an ordinance if one is passed.

Respectfully submitted,
Chuck Little

Christine Wengler

Subject: Short term rental meeting on Facebook this evening

My concern is about the hotels and bed-and-breakfast. I want to make sure that the hotels and the bed and breakfast also fall under these guidelines that you are setting for the short term rentals, that there are to be no rentals until June 10, 2020. It seems that the hotels have voluntarily closed their doors but it does not appear that they are included in this proposal to shut down all rentals until June 10, 2020. So if that's the case they can open their doors at any time. So I want to make sure that they are also included in this please clear this up. Thank you very much.