

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	October 4, 2021
Action Required:	Approval of City of Charlottesville’s inclusion in the Blue Ridge Cigarette Tax Board
Presenter:	Todd Divers, Commissioner of the Revenue Jason Vandever, Treasurer
Staff Contacts:	Todd Divers, Commissioner of the Revenue Jason Vandever, Treasurer
Title:	ORDINANCE TO APPROVE THE CREATION OF THE BLUE RIDGE CIGARETTE TAX BOARD

Background:

During the 2020 session of the General Assembly, Virginia counties were granted authority to levy taxes on cigarettes beginning on July 1, 2021. Further legislation adopted by the General Assembly this year declared that “it is the policy of the Commonwealth that, where practical, local cigarette stamping and tax collection is encouraged to be accomplished through regional cigarette tax boards”.

Discussions began among a number of neighboring localities to consider the role of a regional cigarette tax board, ways to share administrative costs, and a timeline of activities required to establish a Central Virginia regional board in FY 22. Those discussions, facilitated by staff of the Thomas Jefferson Planning District, culminated in a proposal to create a joint entity in this region that would be responsible for the collection of taxes on the sale of cigarettes and the subsequent distribution of those taxes to the member municipalities. This proposed regional board is modeled on the Northern Virginia Cigarette Tax Board, which serves 19 localities.

Staff believes that it would be beneficial for the City to join what will become the Blue Ridge Cigarette Tax Board and to appoint the Commissioner of Revenue, or their designee, to represent the City on that Board.

Discussion:

Virginia Code Section 15.2-1300 provides municipalities the option to come together to establish joint regional boards responsible for the collection and disbursement of taxes on cigarettes sold within the municipalities party to the Agreement. So far, seven counties and the City have participated in discussion toward an agreement to establish such a board under this provision. Blue Ridge Cigarette Tax Board staff would be housed under the Thomas Jefferson Planning District, and the Board is expected to begin its work in January 2022.

Pros:

- While Cities in Virginia have long had authority to tax cigarettes and are not currently required to join such regional cigarette tax boards, staff believes that it may be only a matter of time before all localities will be required to join such boards. Therefore, joining a regional board now might prevent the City from having to scramble in future years if the General Assembly elects to make regional boards mandatory. Joining now gives the City the opportunity to have membership and input in the board's development over the coming year.
- Joining a regional board would eliminate the City's stand-alone cigarette tax program, thereby reducing the administrative role played by the Treasurer's Office and provide a dedicated enforcement program through the regional board.
- Perhaps most importantly, collaborating with the County on a regional program would have other ancillary benefits to City-County relations and possibly make the regional board more successful.
- Because of how the stamps would be administered, revenue would be more consistent each year, as opposed to the wide swings we currently see year to year. Instead of having wholesalers and distributors purchase large quantities of stamps upfront, resulting in large revenues in one month and little to no revenue in subsequent months, the City would receive an even distribution of revenue each month based on packs sold to retailers.

Cons:

- The largest drawback to joining a regional cigarette tax board would be the administrative costs. TJPDC estimates first year costs of about \$38,000 for the City of Charlottesville, and ongoing administrative costs of \$16,000, based on sales volume.
- Additionally, the City may see a temporary revenue loss in the first year as wholesalers return previously purchased City stamps for a refund during the program's transition.

Alignment with City Council's Vision and Strategic Plan:

n/a

Budgetary Impact:

The City's involvement in the Board will result in some up-front costs associated with start-up, and some ongoing expenses thereafter. Staff believes that these costs will be offset in the long term as a result of increased compliance through a dedicated enforcement agent. Further, there is some reason to believe that newly levied cigarette taxes in surrounding localities will reduce the incentive for smokers to buy cigarettes out-of-town. This could drive revenues slightly higher than projected.

At this point, however, beyond the initial start-up cost of less than \$50,000, staff estimates revenue impact to be neutral.

Recommendation:

Approval of the ordinance allowing for the City's participation in the Blue Ridge Cigarette Tax Board.

Alternatives:

n/a

Attachments:

- Regional Cigarette Tax Projection and Estimated Expenses Spreadsheet
- Cigarette Stamp, Tax and Enforcement Flow Chart
- ORDINANCE TO APPROVE THE FORMATION OF A JOINT ENTITY KNOWN AS THE BLUE RIDGE CIGARETTE TAX BOARD ET SEQ.

Regional Cigarette Tax Projections

Participating Localities	Population	Estimated Annual Revenue for full year	Tax Rate Per Pack	Estimated Packs Sold	Estimated Average # of Packs Sold Per Person	Revenue Ratio	Packs Sold Ratio	First Year (FY22)				FY23+	
								Projected Start-up/One-time Expenses - Based on Itemized Estimates 1st Year (FY22)	Projected On-Going Expenses - Based on Itemized Estimates - 1st Year (FY22 - Jan-June)	Estimated Total Expenses - Start-Up AND On-going - 1st Year (FY22 - Jan-June)	Estimated Net Revenue - 1st Year (FY22 - Jan-June)	Projected on-going Admin Expenses - Based on Itemized Estimates (FY23+)	Estimated Net Revenue - (FY23+)
Charlottesville City	47266	\$614,553	0.55	1,117,368	23.64	20.63%	13.72%	\$29,924	\$29,924	\$59,848	\$247,429	\$16,079	\$598,473
Albemarle County	109330	\$1,033,824	0.40	2,584,561	23.64	34.71%	31.74%	\$69,216	\$69,216	\$138,432	\$378,480	\$37,193	\$996,632
Nelson County	14930	\$141,178	0.40	352,945	23.64	4.74%	4.33%	\$9,452	\$9,452	\$18,904	\$51,685	\$5,079	\$136,099
Fluvanna County	27270	\$257,865	0.40	644,663	23.64	8.66%	7.92%	\$17,264	\$17,264	\$34,529	\$94,404	\$9,277	\$248,588
Augusta County	75558	\$267,929	0.15	1,786,191	23.64	9.00%	21.93%	\$47,835	\$47,835	\$95,671	\$38,294	\$25,704	\$242,225
Greene County	19819	\$187,408	0.40	468,521	23.64	6.29%	5.75%	\$12,547	\$12,547	\$25,095	\$68,610	\$6,742	\$180,666
Orange County	37051	\$350,354	0.40	875,886	23.64	11.76%	10.76%	\$23,457	\$23,457	\$46,914	\$128,264	\$12,604	\$337,750
Madison County	13261	\$125,396	0.40	313,490	23.64	4.21%	3.85%	\$8,395	\$8,395	\$16,791	\$45,907	\$4,511	\$120,885
Total Revenue		\$2,978,508		8,143,625		100.00%	100.00%	\$218,091	\$218,091	\$436,183	\$1,053,071	\$117,190	\$2,861,318

Start-up/One-time Expenses

Technology and equipment	\$2,500	
Vehicle for enforcement	\$25,000	
Start up costs*	\$50,000	(Can assume a return of portion of start up costs based on actual annual revenues)
4.72% Reserve	\$140,591	(Can assume a return of portion of reserve based on actual annual revenues)
Subtotal one-time	\$218,091	

*Anticipated Start up costs - TJPDC Staff time, stamp development, purchase of tracking software, etc.

On-going Expenses

First Year Central VA Regional Board Itemized Operating Costs	First Year Estimates Jan-June 2022 1 staff	On-going Estimates 1 staff	
Salary for one staff members	\$22,500	\$45,000	
Benefits	\$6,750	\$13,500	
Indirect Costs (66%)	\$19,305	\$38,610	
Vehicle Ongoing (Parking Garage Pass)	\$800	\$1,600	*\$1600 based on \$130/12 = 1560
Milage expense	\$9,240	\$18,480	*Mileage .56 * 33000 miles/yr
Subtotal on-going	\$58,595	\$117,190	

Estimated Net Revenues +/- 20% - 1 Staff

Participating Localities	Estimated Net Revenue - Year 1 (+/- 20%)			Participating Localities	Estimated Net Revenue - Year 2+ (+/- 20%)		
	Estimated Net Revenue - Year 1 (-20%)	Estimated Net Revenue - 1st Year (Jan-June)	Estimated Net Revenue - Year 1 - (+20%)		Estimated Net Revenue - Year 2+ (-20%)	Estimated Net Revenue - 2nd Year and Forward	Estimated Net Revenue - Year 2+ (+20%)
Charlottesville City	\$197,943	\$247,429	\$296,914	Charlottesville City	\$478,779	\$598,473	\$718,168
Albemarle County	\$302,784	\$378,480	\$454,176	Albemarle County	\$797,305	\$996,632	\$1,195,958
Nelson County	\$41,348	\$51,685	\$62,022	Nelson County	\$108,879	\$136,099	\$163,319
Fluvanna County	\$75,523	\$94,404	\$113,284	Fluvanna County	\$198,871	\$248,588	\$298,306
Augusta County	\$30,635	\$38,294	\$45,952	Augusta County	\$193,780	\$242,225	\$290,670
Greene County	\$54,888	\$68,610	\$82,332	Greene County	\$144,533	\$180,666	\$216,800
Orange County	\$102,611	\$128,264	\$153,916	Orange County	\$270,200	\$337,750	\$405,300
Madison County	\$36,726	\$45,907	\$55,088	Madison County	\$96,708	\$120,885	\$145,062
Total Revenue	\$842,457	\$1,053,071	\$1,263,685	Total Revenue	\$2,289,054	\$2,861,318	\$3,433,581

NVCTB Rates

NVCTB Expenditure/NVCTB Revenue 6.63%

NVCTB Estimated Operating Expense \$197,363

NVCTB Estimated Annual Revenue \$6,274,255

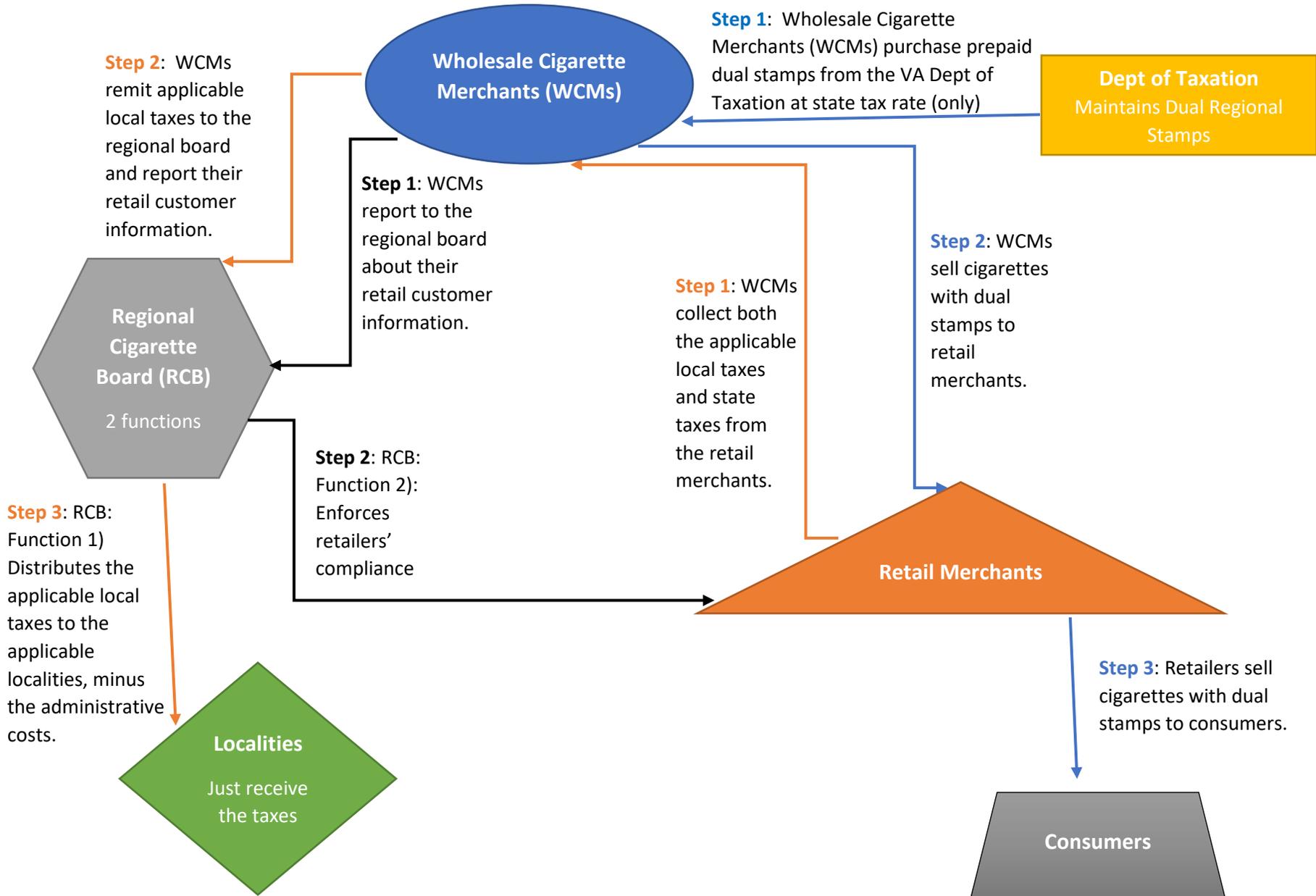
NVCTB Estimated Annual Reserve Rate 4.72%

TJPDC Admin Rate (1 staff) 0.039345207
 NVCTB Admin Rate 0.0663

Cigarette Stamp, Tax and Enforcement Flow Chart

Administered in a regional board

Blue line: stamp route
Orange line: cigarette tax route
Black line: enforcement route



ORDINANCE

AN ORDINANCE APPROVING THE FORMATION OF A JOINT ENTITY TO BE KNOWN AS THE BLUE RIDGE CIGARETTE TAX BOARD AND BESTOWING ON SUCH ENTITY ALL POWERS NECESSARY AND PROPER FOR THE PERFORMANCE OF ITS DUTIES AS PROVIDED BY LAW

WHEREAS, pursuant to the authority granted to localities under § 15.2-1300 of the Code of Virginia, 1950, as amended, the City Council of the City of Charlottesville, Virginia has determined that it would serve the public interest to establish a joint entity to be known as the Blue Ridge Cigarette Tax Board (the "Board") in order to efficiently administer the collection, accounting, disbursement, compliance monitoring and enforcement of cigarette taxes assessed by the localities desiring to join the Board; and

WHEREAS, the City Council has reviewed an agreement establishing the Board and defining its powers, duties, and other procedures, the text of which is incorporated herein, and City Council is in agreement with the terms as set forth therein; and

WHEREAS, the aforementioned agreement provides that it shall become effective upon the approval by the governing bodies of at least six (6) localities named and the execution of said agreement by their authorized representatives; and

WHEREAS, the City Council wishes to authorize the formation of the Board with the City of Charlottesville, Virginia as a member thereof, and authorize the execution of said agreement on its behalf.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that:

1. Under authority of Virginia Code § 15.2-1300, and effective upon the approval and execution by six (6) or more localities of an agreement for joint action, there is hereby created and established the Blue Ridge Cigarette Tax Board, which shall act as the agent of the localities for the administration of their respective cigarette tax ordinances; and

2. The following agreement for joint action is hereby approved by this Council, and the powers and authority of the Board shall be as set forth in the agreement, subject to approval as to final form by the City Attorney prior to execution:

BLUE RIDGE CIGARETTE TAX BOARD AGREEMENT

This Agreement, dated the ___ day of _____, 2021 is entered into by and between the County of Albemarle, Virginia; the County of Augusta, Virginia; the City of Charlottesville, Virginia; the County of Fluvanna, Virginia; the County of Greene, Virginia; the County of Madison, Virginia; the County of Nelson, Virginia; the County of Orange, Virginia; or any six or more of the foregoing, and provides as follows:

WHEREAS, the parties hereto (the "Member Jurisdictions") desire to enter into an Agreement for the purpose of the establishment of the Blue Ridge Cigarette Tax Board (the "Board") for the joint administration, collection, and enforcement of their respective Cigarette Tax Ordinances pursuant to the provisions of these ordinances and § 15.2-1300 and §§ 58.1-3830, *et. seq.*, of the Code of Virginia, 1950, as amended.

NOW, THEREFORE, the parties hereby enter into the following agreement:

1. NAME AND DURATION

The Board shall be called the Blue Ridge Cigarette Tax Board. Its duration shall be perpetual, subject to the provisions of Paragraph 9 herein.

2. MEMBERSHIP AND VOTING POWERS

The Board shall be composed of one representative from each jurisdiction currently named herein and one representative from those jurisdictions later added with the consent of the Board in conformity with Section 10. Said representative may designate an alternate to attend meetings and vote in his or her place. A majority of the representatives from the member jurisdictions shall constitute a quorum for transaction of business. Action of the Board shall be by majority vote of those present and voting, with the exception of adding new members to the Board, which shall require the approval by the majority of the entire Board membership. In all matters, each jurisdiction shall be entitled to only one vote.

3. OFFICERS AND MEETINGS

Each year, the Board shall elect a Chair, Vice-Chair, and Secretary/Treasurer, who shall serve for a term of one (1) year unless removed by majority action of the Board. The aforementioned officers shall be chosen from the members of the Board, and shall be empowered to sign in the name of the Board on all legal documents, including bank deposits and withdrawals. The Board shall meet from time to time as needed, and shall meet at least quarterly, however, additional meetings may be called at any time by action of the Chair or upon the request of three (3) or more members by submitting such request to the Chair in writing.

The Board may adopt bylaws, procedural rules and other policies to regulate its affairs not inconsistent with this Agreement.

4. POWERS OF THE BOARD

The Board shall be delegated the following powers from the member jurisdictions:

- a. The power to assess, collect and disburse the cigarette taxes levied by and for each member jurisdiction;
- b. The power to audit the sale or use of cigarettes within each member jurisdiction;
- c. The power to provide information to the appropriate law enforcement agencies of the affected member jurisdictions for the purpose of prosecution of criminal violations of cigarette tax laws;
- d. The power to hire, supervise, discharge and manage an Administrator to oversee the day-to-day operations of the Board;
- e. The power to establish and manage general operating funds to ensure proper funding of Board operations on an ongoing basis;
- f. The power to employ auditors for review of the Board's finances, and employ accountants, legal counsel, and other advisors as the Board deems necessary or advisable to discharge its' duties;
- g. The power to designate one or more depository bank or banks for tax funds collected;
- h. The power to contract with the Thomas Jefferson Planning District Commission or one or more member jurisdictions for provision of administrative, fiscal and personnel services;
- i. The power to hold and convey personal property. The Board shall have no power to hold or convey real property;
- j. The power to enter into contracts, including without limitation the power to enter into contracts with public bodies;
- k. The power to contract for benefits for Board employees;
- l. Any other powers granted to the Board by other provisions of this Agreement, by the respective local ordinances of the member jurisdictions, and by the Code of Virginia (1950), as amended.

5. LIABILITY INSURANCE

The Board is hereby authorized and directed to maintain insurance coverage appropriate to the nature of the Board's operations. General liability insurance shall be maintained through a commercial general liability policy in limits of not less than One Million Dollars (\$1,000,000). The Board shall maintain worker's compensation coverage in at least the statutorily required minimum amounts.

6. ADMINISTRATOR

The Board shall appoint an Administrator, who shall be responsible for the normal, day-to-day operations of the Board in administration of the Cigarette Tax Ordinances adopted by each of the member jurisdictions. The Administrator shall serve at the pleasure of the Board and under such terms and conditions of employment as the Board shall deem appropriate, which may include the power of the Administrator to hire, train, discipline and discharge subordinate employees as needed to carry into effect the purposes and duties of the Board, contingent upon creation by the Board of such subordinate positions. The Administrator shall act as the chief employee of the Board, and shall answer to and be under the supervision of the Board. The Administrator shall attend Board meetings and report to the Board on expenditures of the Board, projected revenues, and other matters relevant to the efficient administration of the Board. The Board may adopt such contracting and purchasing policies as it may deem appropriate, consistent with the Virginia Public Procurement Act and other applicable laws and regulations, and delegate to the Administrator the authority and responsibility for administration thereof. The duties of the Administrator shall include, but are not limited to the following:

- a. Preparation of annual administrative cost estimates;
- b. Reporting to the Board with recommendations as to the creation of employment positions needed to carry into effect the purposes and duties of the Board;
- c. Hiring, management, evaluation, training, discipline and discharge of employees in such employment positions created by the Board;
- d. Contracting, with the approval of the Board, for equipment, supplies, employee health and retirement benefits and other benefits as approved by the Board;
- e. Preparation of such other reports as the Board may require;
- f. Review and authorization of disbursements from Board accounts, including without limitation regular disbursements of tax revenue from member jurisdictions.

7. COLLECTION OF THE CIGARETTE TAX

The cigarette tax shall be assessed and collected according to the respective ordinances and according to the rules, regulations and procedures adopted by the Board.

8. DISBURSEMENT OF RECEIPTS, MANAGEMENT OF FUNDS

- a. Disbursements shall be made to each member jurisdiction on a monthly basis. Prior to disbursement to member jurisdictions, expenses for the applicable period shall be deducted from total revenues and allocated to the jurisdictions proportionately based upon the number of taxable packs of cigarettes reported within the jurisdiction during the period as compared to the total number of taxable packs of cigarettes reported in all the member jurisdictions. The disbursement to each member jurisdiction shall be determined by the tax rate of the jurisdiction multiplied by the taxable packs of cigarettes reported within the jurisdiction, plus interest and penalties assessed within the jurisdiction in question, plus the jurisdiction's proportional share of all other revenues, less discounts and proportional expenses.
- b. The Board shall adopt an annual budget and provide a copy thereof to each of the member jurisdictions. The Board shall establish an operating fund, taking into account the anticipated revenues and expenditures for each year.
- c. All monies shall be deposited in the name of the Blue Ridge Cigarette Tax Board. All checks drawn on Board accounts shall require the signature of the Administrator and at least one Board Officer.

9. TERMINATION

- a. In the event any member jurisdiction decides, by ordinance, to terminate its participation in the Board, notice thereof shall be given to the Board no fewer than sixty (60) days prior to the effective date of such termination. The terminating jurisdiction shall receive within thirty (30) days of the effective date of termination its proportionate share of total revenues less its proportionate share of expenses, operating fund, and depreciated value of tangible personal property owned by the Board. The representative of such terminating jurisdiction shall cease to be a member of the Board as of the effective date of the termination and thereafter the

terminating jurisdiction shall have no rights to participate in the business or operations of the Board, and the terminating jurisdiction shall thereafter have sole rights and responsibility for collection and enforcement of its local cigarette tax.

- b. In the event the number of member jurisdictions is less than six (6) in number, the Board shall dissolve and cease to exist. In such event, the Board, prior to dissolution, shall liquidate all assets and disburse the proceeds to each member jurisdiction that has not previously received a payment pursuant to Paragraph 9(a). Such distribution shall be proportionate to the number of taxable packs of cigarettes reported in the jurisdiction in question during the preceding twelve (12) months as compared to the taxable packs of cigarettes reported in the preceding twelve (12) months in all jurisdictions constituting the Board at the time of dissolution.

10. IMPLEMENTATION

Each member jurisdiction shall by ordinance signify its desire and agreement to become a member of the Board and its acceptance of the provisions of this Agreement. This Agreement shall become effective upon the adoption of such ordinances and execution of this agreement by any six (6) of the jurisdictions below, and thereafter any other jurisdiction named below may join as a member upon the adoption of such ordinance and execution by its authorized representative, and upon payment of any shared expenses as may be determined by the Board. Upon such execution and payment, this agreement shall become operative as to the jurisdiction in question.

Jurisdictions other than those named below may be added to the Board upon agreement of a majority of the Board, and upon adoption of an ordinance by the governing body of the jurisdiction to be added, execution of this Agreement, and payment into the Board of any shared expenses as may be determined by the Board.

And, BE IT FURTHER ORDAINED that

3. The City Council designates the Commissioner of Revenue as its representative on the Board as provided for in the above-referenced agreement, and the Commissioner is also empowered to appoint an alternate should the Commissioner deem it necessary. the City Council also hereby authorizes the Administrator appointed by the Board to act on the City's behalf pursuant to Virginia Code §58.1-3830(A); and

4. The City Manager is authorized to execute the agreement for joint action on behalf of this Council, and the City Manager is further designated as the City's agent for approval of modifications of the agreement subsequent to the date of this Ordinance, which do not materially alter the obligations of the City under this agreement; and

5. This Ordinance shall be effective upon its adoption.