



TOWN COUNCIL WORK SESSION

Monday, June 19, 2017 @ 7:00 PM

Town Hall Conference Room

Town/Staff Related Issues:

1. Update on Solid Waste Review – *Town Manager*
2. Shentel Fiber Optic Telecommunication Franchise Agreement Renewal – *Town Attorney*
3. Tourism Zone Applications for Vibe Properties – *Director of Planning/Zoning*
4. Update on At-Risk Structures – *Director of Planning/Zoning*

Council/Mayor Related Items

5. Council Discussion/Goals (*time permitting*)

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Item No. __1__

Town of Front Royal, Virginia Work Session Agenda Form

Date: June 19, 2017

Agenda Item: Update on the Solid Waste Review

Summary: Staff has been evaluating the solid waste division to determine if the Town can continue to provide the service level to our citizens and recover all cost to be a sustainable enterprise fund.

Council Discussion: Informational update for Council

Staff Evaluation: Staff will provide update on the business case along with measures to reduce overall cost including the new stream recycling program

Budget/Funding: N/A

Legal Evaluation: Town Attorney will be available

Staff Recommendations: Staff will be available

Town Manager Recommendation: Town Manager will be available

Council Recommendation:

☐ Additional Work Session ☐ Regular Meeting ☐ No Action
Consensus Poll on Action: ____ (Aye) ____ (Nay)

Work Session

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Town of Front Royal, Virginia Work Session Agenda Form

Date: June 19, 2017

- Agenda Item:** Initial review of a request from Shentel Communications, LLC for a new franchise agreement for telecommunications services commencing August 15, 2017.
- Summary:** In 2011, Shenandoah Telephone Company (“Shentel”) entered into a five year franchise agreement with the Town to use the public ways to construct, operate and maintain a fiber optic telecommunications system, the term of which was extended through August 14, 2017. The franchise was limited in scope to individual fiber build projects, with the scope of the franchise to be expanded for additional fiber builds on a case-by-case basis pursuant to administrative review and approval. Shentel Communications, LLC now seeks a new, fifteen (15) year, Town-wide, telecommunications franchise effective August 15, 2017.
- Council Discussion:** Town Council is asked to grant to Shentel Communications, LLC a fifteen year telecommunications franchise commencing August 15, 2017.
- Staff Evaluation:** Shentel currently provides telecommunications services via its installed fiber optic cable system only to select businesses and schools. It is unclear whether services would be extended to a larger range of customers should the Town grant the proposed franchise. Consideration of any new franchise should be preceded by a right-of-way utilization study to determine capacity and establish policy. The proposed franchise would generate revenue for the Town. Franchises for a term in excess of five years must be advertised for bids pursuant to Virginia Code §15.2-2100 (B).
- Budget/Funding:** None.
- Legal Evaluation:** The Town Attorney will be available for legal questions.
- Staff Recommendations:** Staff will be available
- Town Manager Recommendation:** The Town Manager recommends further study on the impact of right-of-way before consideration of any new franchise agreement.
- Council Recommendation:**
- ☐ Additional Work Session ☐ Regular Meeting ☐ No Action
Consensus Poll on Action: ____ (Aye) ____ (Nay)

**SHENTEL COMMUNICATIONS LLC
TELECOMMUNICATIONS FRANCHISE**

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**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO SHENTEL
COMMUNICATIONS, LLC, ITS SUCCESSORS AND ASSIGNS TO USE
THE STREETS AND OTHER PUBLIC PLACES
OF THE TOWN OF FRONT ROYAL, VIRGINIA
FOR ITS POLE, WIRES, CONDUITS, CABLES AND FIXTURES**

BE IT ORDAINED by the Council of the Town of Front Royal, Virginia, that SHENTEL COMMUNICATIONS, LLC (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise and is hereby authorized and empowered to erect, maintain and operate certain telecommunications facilities and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the Town of Front Royal, Virginia (the “Town”) as its business may from time to time require; provided that:

ARTICLE I

SECTION 101 PURPOSE AND SCOPE

To provide for the health, safety and welfare of its citizens and to ensure the integrity of its roads and streets and the appropriate use of the Public Rights-of-Way, the Town strives to keep the right-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

Accordingly, the Town hereby enacts this Ordinance relating to a telecommunications right-of-way franchise and administration. This Ordinance imposes regulation on the placement and maintenance of Facilities and equipment owned by the Company currently within the Town’s Public Rights-of-Way or to be placed therein at some future time. The Ordinance is intended to complement, and not replace, the regulatory roles of both state and federal agencies. Under this Ordinance, when excavating and obstructing the Public Rights-of-Way, the Company will bear financial responsibility for their work to the extent provided herein. Finally, this Ordinance provides for recovery of the Town’s reasonable out-of-pocket costs related to the Company’s use of the Public Rights-of-Way, subject to the terms and conditions herein.

SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company’s use of the Town’s Public Rights-of-Way along Town roads pursuant to the authority granted to the Town under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law.

This Ordinance and any right, privilege or obligation of the Town or Company hereunder, shall be interpreted consistently with state and federal statutory, administrative and common law, and such statutory, administrative or common law shall govern in the case of conflict. This Ordinance shall not

be interpreted to limit the regulatory and police powers of the Town to adopt and enforce other general ordinances necessary to protect the health, safety, and welfare of the public.

SECTION 103 DEFINITIONS

103.1 TOWN means the Town of Front Royal, Virginia.

103.2 COMPANY means Shentel Communications, LLC, including its successors and assigns.

103.3 DIRECTOR means the Director of Public Works for the Town of Front Royal.

103.4 FACILITY means any tangible asset in the Public Rights-of-Way required to provide utility service, which includes but is not limited to; cable television, electric, natural gas, telecommunications, water, sanitary sewer and storm sewer services.

103.5 PATCH means a method of pavement replacement that is temporary in nature.

103.6 PAVEMENT means any type of improved surface that is within the Public Rights-of-Way including but not limited to any improved surface constructed with bricks, pavers, bituminous, concrete, aggregate, or gravel or some combination thereof.

103.7 PUBLIC RIGHTS-OF-WAY or PROW means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the Town has an interest, included other dedicated rights-of-way for travel purposes and utility easements of the Town, paved or otherwise. This definition does not include a state highway system regulated pursuant to the direction of the Commonwealth Transportation Board.

ARTICLE II

SECTION 201 INITIAL INSTALLATION

The initial installation of equipment, lines, cables or other Facilities by the Company shall be a mixture of overhead and underground in Public Rights-of-Way as existing on the Effective Date.

SECTION 202 SUBSEQUENT INSTALLATION

202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:

Additional Facilities installed within the PROW may be placed overhead or underground pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such installations that have been adopted by the Town from time to time.

[[202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES: As a matter of policy, the Town prefers that the installation of any Facility within the PROW occur underground. Notwithstanding this preference, the Town recognizes that in some circumstances the placement of Facilities underground may not be appropriate.]]

202.3 INSTALLATION OF OVERHEAD FACILITIES: Where a subsequent PROW plan is approved for overhead installation, the Company shall use its existing Facilities, or those of another utility where available. If the PROW plan calls for overhead installation and existing Facilities cannot accommodate the proposed installation, the Company will clearly indicate in the PROW plan its intended placement of new Facilities for the Director's review and consideration pursuant to Article III.

202.4 FUTURE ORDINANCES: Nothing herein shall be construed to limit the authority of the Town to adopt an ordinance that will restrict the placement of overhead lines for all utilities using the PROW within a defined area of the Town.

202.5 CONDITIONS FOR RELOCATING UNDERGROUND: The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all of its Facilities in the Town's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense. Notwithstanding the foregoing, the Town shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 203 INSPECTION BY THE TOWN

The Company shall make the work-site available to the Town and to all others as authorized by law for inspection at all reasonable times, during the execution of, and upon completion of, all work conducted pursuant to this Ordinance.

SECTION 204 AUTHORITY OF THE TOWN TO ORDER CESSATION OF EXCAVATION

At the time of inspection, or any other time as necessary, the Town may order the immediate cessation and correction of any work within the Public Rights-of-Way which poses a serious threat to the life, health, safety or well being of the public.

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

In general, all posts, poles, wires, cables and conduits which the Company places within the Public Rights-of-Way pursuant to this Ordinance shall in no way permanently obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the Public Rights-of-Way within the Town of Front Royal.

SECTION 206 OBSTRUCTION OF THE PROW

Generally, any obstruction of the PROW is limited to the manner clearly specified within an approved PROW plan.

206.1 REMOVAL OF OBSTRUCTIONS: Obstructions of the PROW not authorized by an approved PROW plan shall be promptly removed by the Company upon receipt of notice from the Town. The Town's notice of the Obstruction will include a specified reasonable amount

of time determined by the Director for the Company's removal of the obstruction, given the location of the obstruction and its potential for an adverse effect on the public's safety and the public's use of the PROW. If the Company has not removed its obstruction from the PROW within the time designated within the notice, the Town, at its election, will make such removal and the Company shall pay to the Town its reasonable costs within thirty (30) days of billing accompanied by an itemized statement of the Town's reasonable costs. If payment is not received by the Town within the thirty (30) day period, the Town Attorney may bring an action to recover the reasonable costs of the removal and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to administrative, overhead mobilization, material, labor, and equipment related to removing the obstruction.

206.2 NO OBSTRUCTION OF WATER: The Company shall not obstruct the PROW in a manner that interferes with the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterway.

206.3 PARKING, LOADING AND UNLOADING OF VEHICLES SHALL NOT OBSTRUCT THE PROW: Private vehicles of those doing work for the Company in the PROW must be parked in a manner that conforms to the Town's applicable parking regulations. The loading or unloading of trucks must be done in a manner that will not obstruct normal traffic within the PROW, or jeopardize the safety of the public who use the PROW.

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

The Director is the principal Town official responsible for the administration of this Ordinance granting a telecommunications franchise to the Company and any of its PROW Plans. The Director may delegate any or all of the duties hereunder to an authorized representative.

SECTION 302 SUBMISSION OF PROW PLAN

At least thirty (30) days before beginning any installation, removal or relocation of underground or overhead Facilities, the Company shall submit detailed plans of the proposed action to the Director for his or her review and approval, which approval shall not unreasonably be withheld, conditioned, or delayed.

SECTION 303 GOOD CAUSE EXCEPTION

303.1 WAIVER: The Director, at his or her sole judgment, is authorized to waive the thirty (30) day requirement in Section 302 for good cause shown.

303.2 EMERGENCY WORK: The Company shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The Company will proceed to take whatever actions are necessary to respond to the emergency, or as directed by the Director.

If the Town becomes aware of an emergency regarding the Company's facilities, the Town will attempt to contact the Company's emergency representative as indicated in Section 1202. In any event, the Town shall take whatever action it deemed necessary by the Director to make an appropriate and reasonable response to the emergency. The costs associated with the Town's respond shall be borne by the person whose facilities occasioned the emergency.

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR

304.1 DECISION: The Director, or his or her authorized representative, shall, within thirty (30) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

304.2 APPEAL: Upon written request within thirty (30) days of the Director's decision, the Company may have the denial of a PROW Plan reviewed by the Town Manager. The Town Manager will schedule its review of the Director's decision within forty-five (45) days of receipt of such a request. A decision by the Town Manager will be in writing and supported by written findings establishing the reasonableness of its decision.

SECTION 305 MAPPING DATA

Upon completion of each project within the Public Rights-of-Way pursuant to this Ordinance, the Company shall provide to the Town such information necessary to maintain its records, including but not limited to:

- (a) location and elevation of the mains, cables, conduits, switches, and related equipment and other Facilities owned by the Company located in the PROW, with the location based on (i) offsets from property lines, distances from the centerline of the Public Rights-of-Way, and curb lines; (ii) coordinates derived from the coordinate system being used by the Town; or (iii) any other system agreed upon by the Company and the Town;
- (b) the outer dimensions of such Facilities; and
- (c) a description of above ground appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

Obtaining this telecommunications franchise shall in no way relieve the Company of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any applicable state or federal rule, law or regulation. The Company shall comply with and fulfill all generally applicable laws and regulations, including ordinances, regulations and requirements of the Town, regarding excavations and any other work in or affecting the Public Rights-of-Way. The Company shall perform all work in conformance with all applicable codes and established

rules and regulations, and it is responsible for all work conducted by the Company, another entity or person acting on its behalf pursuant to this Ordinance in the Public Rights-of-Way.

ARTICLE V

SECTION 501 RELOCATION OF COMPANY FACILITIES WITHIN THE PUBLIC RIGHTS-OF WAY

Upon written notice from the Director of a planned and authorized improvement or alteration of Town sidewalks, streets or other property, or of a proposed relocation of any Town-owned utilities that necessitate relocation of some or all of the Facilities owned by the Company and lines to accommodate same, the Company shall relocate at its own expense any such Facilities within one hundred eighty (180) days of receipt of the notice. At Company's request, the Town may consent to a longer period, such consent not to be unreasonably or discriminatorily withheld, conditioned or delayed. Notwithstanding the foregoing, the Town shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

502.1 RESTORATION STANDARD: Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the restoration of the Public Rights-of-Way, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;
- (b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;
- (c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;
- (d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

502.2 TEMPORARY SURFACING: The Company shall perform temporary surfacing patching and restoration including, backfill, compaction, and landscaping according to standards determined by, and with the materials determined by, the Director .

502.3 TIMING: After any excavation by the Company pursuant to this Ordinance, the patching and restoration of the Public Rights-of-Way must be completed promptly and in a manner determined by the Director.

502.4 GUARANTEES: The Company guarantees its restoration work and shall maintain it for twenty-four (24) months following its completion. The previous statement notwithstanding, the Company will guarantee and maintain plantings and turf for twelve (12) months. During these maintenance periods, the Company shall, upon notification by the Town, correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of notice from the Director, within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure. Notwithstanding the foregoing, the Company's guarantees set forth hereunder concerning restoration and maintenance, shall not apply to the extent another company, franchisee, licensee, permittee, other entity or person, or the Town disturbs or damages the same area, or a portion thereof, of the Public Rights-of-Way.

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the Town, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

502.6 FAILURE TO RESTORE: If the Company fails to restore the Public Rights-of-Way in the manner and to the condition required by the Director pursuant to Section 502.5, or fails to satisfactorily and timely complete all restoration required by the Director pursuant to the foregoing, the Town shall notify the Company in writing of the specific alleged failure or failures and shall allow the Company at least ten (10) days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the Town's notice as provided above, the Town may, at its election, perform the necessary work and the Company shall pay to the Town its reasonable costs for such restoration within thirty (30) days of billing accompanied by an itemized statement of the Town's reasonable costs. If payment is not received by the Town within the thirty (30) day period, the Town Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such restoration.

502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY: The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the Town's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the Town. If the Company does not correct the Town's damaged Facilities pursuant to the foregoing, the Town may make such repairs as necessary and charge all of the reasonable costs of such

repairs within thirty (30) days of billing accompanied by an itemized statement of the Town's reasonable costs. If payment is not received by the Town within such thirty (30) day period, the Town Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such repair.

502.8 DIRECTOR'S STANDARD: All determinations to be made by the Director with respect to the manner and extent of restoration, patching, repairing and similar activities under the franchise granted by this Ordinance, shall be reasonable and shall not be unreasonably conditioned, withheld, or delayed. The Company may request additional time to complete restoration, patching, repair, or other similar work as required under the franchise granted by this Ordinance, and the Director shall not unreasonably withhold, condition, or delay consent to such requests.

ARTICLE VI

SECTION 601 INDEMNIFICATION AND LIABILITY

601.1 SCOPE OF INDEMNIFICATION: Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the Town council members, Board and its employees free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from:

- (a) the Company's use of the streets, alleys, highways, sidewalks, rights-of-way and other public places of the Town pursuant to the franchise granted by this Ordinance;
- (b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, cables, conduits, lines, manholes, facilities and equipment by the Company, its authorized agents, subagents, employees, contractors or subcontractors; or
- (c) the exercise of any right granted by or under the franchise granted by this Ordinance or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under the franchise granted by this Ordinance.

601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS: If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the Town, either independently or jointly with the Company, the Company will defend, indemnify and hold the Town harmless in any such suit, at the cost of the Company, provided that the Town promptly provides written notice of the commencement or threatened commencement of the action or proceeding involving a claim in respect of which the Town will seek indemnification hereunder. The Company shall be entitled to have sole control over the defense through counsel of its own

choosing and over settlement of such claim provided that the Company must obtain the prior written approval of Town of any settlement of such claims against the Town, which approval shall not be unreasonably withheld or delayed more than thirty (30) days. If, in such a suit, a final judgment is obtained against the Town, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the Town harmless therefrom.

SECTION 602 WAIVER BY THE TOWN

The Town waives the applicability of these indemnification provisions in their entirety if it:

- (a) elects to conduct its own defense against such claim;
- (b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;
- (c) denies approval of a settlement of such claim for which the Company seeks approval; or
- (d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

603.1 The Company shall also maintain in force a comprehensive general liability policy in a form reasonably satisfactory to the Town Attorney, which at minimum must provide:

- (a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self insurance reasonably acceptable to the Town Attorney;
- (b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
- (c) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Town Attorney in amounts sufficient to protect the Town and the public and to carry out the purposes and policies of this Ordinance; and
- (d) verification that the policy has a combined single limit coverage of not less than two million dollars (\$2,000,000).

The policy shall include the Town as an additional insured party, and the Company shall provide the Town Attorney with a certificate of such coverage before beginning installation of any lines, cable or equipment.

603.2 The Company shall also require similar indemnification and insurance coverage from any contractor working on its behalf in the public right-of-way.

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS

Nothing herein contained shall be construed to render the Company liable for or obligated to indemnify the Town, its agents, or employees, for the negligence or intentional acts of the Town, its Council members, its Board, its agents or employees, or a permittee of the Town.

ARTICLE VII

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND

Prior to the Effective Date of this Ordinance, the Company has deposited with the Town a Performance Bond made payable to the Town in the amount of _____ dollars (\$____). The Performance Bond is to guarantee that the project is done in a proper manner without damage to the PROW. The bond shall be written by a corporate surety acceptable to the Town and authorized to do business in the Commonwealth of Virginia. Upon completion of construction of the Facilities, the Company may reduce the Performance Bond to the amount of twenty-five thousand dollars (\$25,000) and made payable to the Town, and the Performance Bond shall be maintained at this amount through the term of this Agreement.

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND

At any time during the Term, the Town may, acting reasonably, require or permit the Company to change the amount of the Performance Bond if the Town finds that new risk or other factors exist that reasonably necessitate or justify a change in the amount of the Performance Bond. Such new factors may include, but not be limited to, such matters as:

- (a) material changes in the net worth of the Company;
- (b) changes in the identity of the Company that would require the prior written consent of the Town;
- (c) material changes in the amount and location of Facilities owned by the Company;
- (d) the Company's recent record of compliance with the terms and conditions of this Ordinance; and
- (e) material changes in the amount and nature of construction or other activities to be performed by the Company pursuant to this Ordinance.

SECTION 703 PURPOSE OF PERFORMANCE BOND

The Performance Bond shall serve as security for:

- (a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;
- (b) any expenditure, damage or loss incurred by the Town occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the Town issued pursuant to this Ordinance;
- (c) payment of compensation required by this Ordinance;
- (d) the payment of premiums for the liability insurance required pursuant to this Ordinance ;
- (e) the removal of Facilities owned by the Company from the Streets at the termination of the Ordinance, at the election of the Town, pursuant to this Ordinance;
- (f) any loss or damage to the Streets or any property of the Town during the installation, operation, upgrade, repair or removal of Facilities by the Company;
- (g) the payment of any other amounts that become due to the Town pursuant to this Ordinance or law;
- (h) the timely renewal of any letter of credit that constitutes the Performance Bond; and
- (i) any other costs, loss or damage incurred by the Town as a result of the Company's failure to perform its obligations pursuant to this Ordinance.

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE

704.1 FEE OR PENALTY: The Company shall be subject to a fee or a penalty for violation of this Ordinance as provided for in applicable law.

704.2 APPEAL: The Company may, upon written request within thirty (30) days of the Town's decision to assess a fee or penalty and for reasons of good cause, ask the Town to reconsider its imposition of a fee or penalty pursuant to this Ordinance unless another period is provided for in applicable law. The Town shall schedule its review of such request to be held within forty-five (45) days of receipt of such request from the Company. The Town's decision on the Company's appeal shall be in writing and supported by written findings establishing the reasonableness of the Town's decision. During the pendency of the appeal before the Town or any subsequent appeal thereafter, the Company shall place any such fee or penalty in an interest-bearing escrow account. Nothing herein shall limit the Company's right to challenge such assessment or the Town's decision on appeal, in a court of competent jurisdiction.

ARTICLE VIII

SECTION 801 COMPENSATION/PROW USE FEE.

The Town reserves the right to impose at any time on the Company consistent with Section 253(c) of the Communications Act of 1934, as amended:

- (a) a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia, and/or
- (b) any other fee or payment that the Town may lawfully impose for the occupation and use of the Streets.

The Company shall be obligated to remit the PROW Use Fee and any other lawful fee enacted by the Town, so long as the Town provides the Company and all other affected certificated providers of local exchange telephone service appropriate notice of the PROW Use Fee as required by Section 56-468.1(G) of the Code of Virginia. If the PROW Use Fee is eliminated, discontinued, preempted or otherwise is declared or becomes invalid, the Company and the Town shall negotiate in good faith to determine fair and reasonable compensation to the Town for use of the Streets by the Company for Telecommunications.

SECTION 802 FRANCHISING COSTS

Prior to the execution of this Ordinance, the Town incurred costs for the services of third parties (including, without limitation, attorneys and other consultants) in connection with the award of this telecommunications Franchise. Within thirty (30) days after receipt from the Town of an invoice for such costs, the Company shall pay at such time and in such manner as the Town shall specify to the Town or, at the direction of the Town, to third parties an amount equal to the costs the Town incurs for the services of such third parties. Payment by Company of such franchising costs shall not in any way be offset nor deducted from applicable PROW use fees required pursuant to Section 801 herein. In the event of any renewal, renegotiations, transfer, amendment or other modification of this Ordinance or the Franchise, the Company will reimburse the Town in the same manner for such third party costs, if any are incurred. The Company's obligations under this Section shall not exceed two thousand five hundred dollars (\$2,500.00).

SECTION 803 NO CREDITS OR DEDUCTIONS

The compensation and other payments to be made pursuant to Article VIII: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges that the Company shall be required to pay to the Town or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company.

SECTION 804 REMITTANCE OF COMPENSATION/LATE PAYMENTS, INTEREST ON LATE PAYMENTS

(1) If any payment required by this Ordinance is not actually received by the Town on or before the applicable date fixed in this Ordinance, or (2), in the event the Town adopts an ordinance

imposing a PROW Use Fee, if such Fee has been received by the Company from its customers, and has not been actually received by the Town on or before the applicable date fixed in this Ordinance or thirty (30) days after receipt of the PROW Use Fee from its customers, whichever is later, then the Company shall pay interest thereon, to the extent permitted by law, from the due date to the date paid at a rate equal to the rate of interest then charged by the Town for late payments of real estate taxes.

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

The Town reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety, health and protection of its inhabitants under its police powers, consistent with state and federal law. The rights herein granted are subject to the exercise of such police powers as the same now are or may hereafter be conferred upon the Town. Without limitation as to the generality of the foregoing the Town reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the Town and with such contributions or at such rates as may be allowed by law.

Notwithstanding anything herein to the contrary, nothing herein shall be construed to extend, limit or otherwise modify the authority of the Town preserved under Sections 253 (b) and (c) of the Communications Act of 1934, as amended. Nothing herein shall be construed to limit, modify, abridge or extend the rights of the Company under the Communications Act of 1934, as amended.

SECTION 902 SEVERABILITY

If any portion of this Ordinance is for any reason held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

The Company will maintain the poles, wires, cable, conduits, lines, manholes, equipment and other Facilities it owns within the Town's PROW in good order and operating condition throughout the term of the franchise granted by this Ordinance.

SECTION 1002 TREE TRIMMING

Should the Company install any overhead lines, it shall have the authority to trim trees upon or overhanging the streets, alleys, walkways or Public Rights-of-Way to prevent the branches of such trees from interfering with its lines or other Facilities. However, all such trimmings shall be performed in a safe and orderly manner under the general direction of the Director of Public Works or his or her designee and in compliance with the pruning standards of the National Arborists Association as currently in effect.

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

The term of the franchise granted by this Ordinance shall be for an initial period of fifteen (15) years from the effective date of this Ordinance.

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

If the Company wishes to maintain its equipment within the Town and to continue the operation of the system beyond the term of the franchise granted by this Ordinance, it shall give written notice to the Town at least one hundred twenty (120) days before expiration of the franchise granted by this Ordinance, stating that it wishes to apply for a new franchise. Such application shall include a report of the location of the Facilities owned by the Company within the Town's PROW, and a statement as to whether the Company has complied with the provisions of this Ordinance.

SECTION 1103 OPERATION OF FACILITIES OWNED BY THE COMPANY WHILE RENEWAL IS PENDING

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the Town under the terms of the franchise granted by this Ordinance until the Town acts. Nothing herein shall be construed to grant the Company a perpetual franchise interest.

ARTICLE XII

SECTION 1201 NOTICE

All notices, except for in cases of emergencies, required pursuant to the franchise granted by this Ordinance shall be in writing and shall be mailed or delivered to the following address:

[to be provided]

All correspondences shall be by registered mail, certified mail or regular mail with return receipt requested; and shall be deemed delivered when received or refused by the addressee. Each Party may change its address above by like notice.

SECTION 1202 EMERGENCY NOTIFICATION

Notices required pursuant to Section 303.2 shall be made orally and by facsimile to the following:

[to be provided]

SECTION 1203 REGISTRATION OF DATA

The Company, including any subleasee or assigns, must keep on record with the Town the following information:

- (a) Name, address and e-mail address if applicable, and telephone and facsimile numbers;
- (b) Name, address and e-mail address if applicable, and telephone and facsimile numbers of a local representative that is available for consultation at all times. This information must include how to contact the local representative in an emergency; and
- (c) A certificate of insurance as required under Article VI, Section 603 of this telecommunications franchise, and a copy of the insurance policy.

The Company shall keep update all of the above information with the Town within fifteen (15) days following its knowledge of any change.

ARTICLE XIII

SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE

The franchise granted by this Ordinance may be terminated:

- (a) by the Company, at its election and without cause, by written notice to the Town at least sixty (60) days prior to the effective date of such termination; or
- (b) by either the Company or the Town, after thirty (60) days written notice to the other party of the occurrence or existence of a default of the franchise granted by this Ordinance, if the defaulting party fails to cure or commence good faith efforts to cure, such default within sixty (60) days after delivery of such notice.

Notwithstanding the provisions of this Section, the terms and conditions of the franchise granted by this Ordinance pertaining to indemnification shall survive a termination under this Section.

ARTICLE XIV

SECTION 1401 REMOVAL OF FACILITIES FROM THE PUBLIC RIGHTS-OF-WAY

The Company shall remove all Facilities owned by the Company from the streets, alleys and public places of the Town at the expense of the Company within six (6) months after the termination, abandonment, or expiration of this franchise granted by this Ordinance, or by such

reasonable time to be prescribed by the Town Council, whichever is later. No such removal will be required while any renewal requests as provided for in Section 1102 and Section 1103, are pending before the Town. If such renewal request is denied, the six (6) month period provided above shall commence on the date of denial or expiration, whichever is later. The Town reserves the right to waive this requirement, as provided for in Section 1402 herein. The Town shall grant the Company access to the Public Rights-of-Way in order to remove its telecommunications Facilities owned by the Company pursuant to this paragraph.

SECTION 1402 ABANDONMENT OF FACILITIES OWNED BY THE COMPANY IN THE PUBLIC RIGHTS-OF-WAY

The telecommunications Facilities owned by the Company may be abandoned without removal upon request by the Company and approval by the Town. This Section survives the expiration or termination of this franchise granted by this Ordinance.

ARTICLE XV

SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT

The franchise granted by this Ordinance shall not be assigned or transferred without the expressed written approval of the Town, which shall not be unreasonably or discriminatorily conditioned, withheld or delayed.

In addition, the Town agrees that nothing in this Ordinance shall be construed to require Company to obtain approval from the Town in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use (“IRU”) in the Facilities owned by the Company, or any portion thereof, to any entity or person. The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof, shall not be construed as the assignment or transfer of any franchise rights granted under this Ordinance.

SECTION 1502 SUCCESSORS AND ASSIGNS

Notwithstanding Section 1501, the Company may assign, transfer, or sublet its rights, without the consent of the Town, to any person or entity that controls, is controlled by or is under common control with the Company, any company or entity with which or into which the Company may merge or consolidate, to any lender of the Company provided the Town is advised of the action prior to enactment. Any successor(s) of the Company shall be entitled to all rights and privileges of this franchise granted by this Ordinance and shall be subject to all the provisions, obligations, stipulations and penalties herein prescribed.

ARTICLE XVI

SECTION 1601 NONEXCLUSIVE FRANCHISE

Nothing in the franchise granted by this Ordinance shall be construed to mean that this is an exclusive franchise, as the Town Council reserves the right to grant additional telecommunications franchises to other parties.

ARTICLE XVII

SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES

Subject to the foregoing, any waiver of the franchise granted by this Ordinance or any of its provisions shall be effective and binding upon the Parties only if it is made in writing and duly signed by the Parties.

SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED

If either Party fails to enforce any right or remedy available under the franchise granted by this Ordinance, that failure shall not be construed as a waiver of any right or remedy with respect to any breach or failure by the other Party. Nothing herein shall be construed as a waiver of any rights, privileges or obligations of the Town or the Company, nor constitute a waiver of any remedies available at equity or at law.

ARTICLE XVIII

SECTION 1801 NO DISCRIMINATION

The Company's rights, privileges and obligations under the franchise granted by this Ordinance shall be no less favorable than those granted by the Town to and shall not be interpreted by the Town in a less favorable manner with respect to any other similarly situated entity or person or user of the Town's Public Rights-of-Way.

ARTICLE XIX

SECTION 1901 FORCE MAJEURE

Neither the Company nor the Town shall be liable for any delay or failure in performance of any part of the franchise granted by this Ordinance from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations embargoes, epidemics, terrorist acts, riots insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

ARTICLE XX

SECTION 2001 EFFECTIVE DATE

This Ordinance shall be effective upon its passage.

Adopted by the Council of the Town of Front Royal on the _____ day of _____, 2017.

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

SHENTEL COMMUNICATIONS, LLC

Date: _____, 2016

By: _____

Its: _____

3

Town of Front Royal, Virginia Work Session Agenda Form

Date: June 19, 2017

Agenda Item: Tourism Zone Application – Vibe Properties LLC
Director of Planning & Zoning

Summary: Vibe Properties LLC submitted tourism zone applications for their two (2) rehabilitation projects, 120-124 E. Main Street and 205 E. Main Street. These properties are located within the Downtown Business Tourism Zone, one of the three tourism zones established by Town Council in 2015. Both projects qualify for tourism zone incentives based on Town Code 75-74.C. The information in the following table (Table A) lists the proposed elements of the applicant's projects. The Capital Investment amounts were increased from \$250,000, as originally estimated by the applicant. The increase was due to higher than expected costs estimated by the applicant.

Table A – Project Details	Capital Investment	Jobs Created	Proposed Uses
205 E. Main Street	\$350,000 (updated 6/13/17)	20+	Retail, Dining, Culture & Arts
120-124 E. Main Street	\$500,000 (updated 6-13/17)	20+	Retail and Dining

Pursuant to Town Code 75-74.E. a Performance Agreement is required to be approved by Town Council before any incentives are provided. Below is a table (table B) that shows the maximum incentives permitted for the two projects, based on the applicant details, including the updated costs, and the Town Code.

Table B – Max. Incentives	BPOL Tax Exemption	Tap Fee Repayment Term	Application Fees
205 E. Main Street	100 % for 10 years	Up to 10 years	Up to 100% reduction
120-124 E. Main Street	100 % for 10 years	Up to 10 years	Up to 100% reduction

The attached draft performance agreement prepared by the Town Attorney includes the following incentives (table C). The draft performance agreement was drafted based on the application details and did not include the Capital Investment increase noted above. This draft performance agreement may be amended to increase the incentives offered at Town Council's discretion.

Table C – Draft	BPOL Tax Exemption	Tap Fee Repayment Term	Application Fees
205 E. Main Street	100 % for 7 years	7 years	70%
120-124 E. Main Street	100 % for 7 years	7 years	70%

The draft performance agreement includes requirements of the applicant for receiving the incentives, including the realization of the project within one (1) year; minimum hours and days of operation of the uses; and compliance with local, state and federal laws.

Council Discussion: This agenda item is scheduled for a work session on June 19, 2017.

Staff Evaluation: Based on the highly positive economic impacts expected from the proposed projects, as well as the higher capital investment costs by the applicant, it may be reasonable to consider increasing the incentives to the maximum amounts specified in the Town Code.

Legal Evaluation: The Town Attorney will be available at the work session for questions.

Town Manager: The Town Manager will be available at the work session for questions.

Council Recommendation:

☐ Additional Work Session ☐ Regular Meeting ☐ No Action
 Consensus Poll on Action: ____ (Aye) ____ (Nay)



AGREEMENT

THIS AGREEMENT, made and dated this _____ day of _____, 2017, by and between **Vibe Properties, LLC**, a Virginia Limited Liability Company, party of the first part, hereinafter referred to as “Vibe Properties”, and the **Town of Front Royal, Virginia**, a municipal corporation, hereinafter referred to as the “Town”.

WHEREAS, Va. Code § 58.1-3851 authorizes localities to establish one or more tourism zones, which tourism zones may grant tax and other incentives, and provide certain regulatory flexibility in said tourism zones.

WHEREAS, the Town of Front Royal has, by the adoption of Town Code Section 75-74, established several Tourism Zones within the Town of Front Royal, which ordinance provides, in relevant part, that:

E. ADMINISTRATION AND INTERPRETATION

- 1. The Town Manager, or designee, is authorized to administer tourism zones.*
- 2. Interpretations of this section shall be determined by the Town Manager, after consultation with the Town Attorney.*
- 3. All eligible businesses must submit an application for tourism zone incentives to the Town Manager's Office.*
- 4. The Town Manager, or designee, shall draft a performance agreement for applicants that qualify for incentives. The performance agreement shall be reviewed by the Town Attorney, Director of Finance, Director of Planning & Zoning, or other departments, authorities, committees, commissions or agencies, as determined appropriate by the Town Manager.*
- 5. Performance agreements shall specify all incentives that are to be authorized and may include conditions of approval, such as, but not limited to, requirements that the applicant maintain certain hours of operation, site improvement requirements, or reduction of incentives from their maximum levels authorized by this section.*
- 6. Incentives are not authorized until a performance agreement is approved by Town Council, and nothing herein shall be interpreted to require or obligate the Town to approving any incentives until a performance agreement is approved by Town Council.*
- 7. Town Council may revoke, reduce, or suspend incentives after approval of the performance agreement if the conditions, or other terms, of the performance agreement are not complied with.*

The provisions of Town Code Section 75-74 are incorporated by reference herein and made a part of this Agreement.

WHEREAS, Vibe Properties has filed a Tourism Zone Application for its property at 120-124 East Main Street, Tax Map Nos. 20A8 4 29 (the "Property"), for an extensive rehabilitation of existing buildings (the "Project"), which is located in the Downtown Business Tourism (DBT) Zone.

WHEREAS, the Project that is proposed to be done to the Property, including the proposed use(s), including façade and window improvements, interior updates to flooring, fixtures, lighting, heating and air conditioning installation (the "Improvements"), sufficient to cause the Property to allow the use of the Property to become that of a destination retail and dining environment. The proposed uses of the Project on the Property are Eligible Types of Land Uses to qualify for incentives under the Town's Downtown Business Tourism (DBT) Zone, as a Tier 2 Tier Group.

WHEREAS, the dollar amount of capital investment that is proposed for the Property is Two Hundred Fifty Thousand Dollars (\$250,000.00).

WHEREAS, the number of jobs that are intended to be created by the Project on the Property is twenty (20) or more jobs.

NOW, THEREFORE, WITNESSETH: that for and in consideration of the foregoing, and in consideration of the economic benefits flowing to both parties as a result of the Project and the improvements to the Property, the parties do agree as follows:

1. Vibe Properties shall receive a 100% reduction in Business and License Occupational License ("BPOL") tax reduction fee for seven (7) years from the date that Vibe Properties applies for a business license at the Property. The BPOL tax reduction shall be based on the estimated increase in BPOL tax, as calculated from the increased revenue generated from the Property after the proposed investment by Vibe Properties as a result of the Project on the Property.
2. Vibe Properties shall receive a Seventy Percent (70%) reduction in permit fees with the Town of Front Royal.

3. Vibe Properties shall be allowed to make payment of required commercial water and sewer utility tap (connection) fees for up to seven (7) years, without interest or other fees, subject to a lien on the Property, or other guarantee satisfactory to the Town.
4. Vibe Properties shall (A) cause the Improvements to be made within a period of one (1) year from the date this Agreement is executed by Vibe Properties and approved by the Town Council of the Town of Front Royal, Virginia; (B) maintain hours of operation whereby commercial operation on the Property are open to the public for at least six (6) hours per day, at least five (5) days per week (subject, however, to closure for reasonable periods of time for needed repairs from Acts of God, normal maintenance, vacations and holidays, or for improvements to the Property which do not cause the Property to lose its qualification for Tourism Zone Incentives in the Downtown Business Tourism (DBT) Zone; and (C) Vibe Properties shall not permit or allow any illegal, dangerous practice or hazardous condition to occur on the Property, shall not violate any State, Federal, or local law concerning the use of the Property, nor permit any illegal activity to occur thereon, except as set forth herein, nor create or allow any nuisance to be or remain upon the Property.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

VIBE PROPERTIES, LLC (SEAL)

By: _____ (SEAL)
Managing Member

TOWN OF FRONT ROYAL, VIRGINIA (SEAL)

BY: _____
TOWN MANAGER

Approved as to form: _____
Town Attorney Date

TOURISM ZONE APPLICATION

TOWN OF FRONT ROYAL - 102 East Main Street, Front Royal, Va. 22630 - 540-635-8007

APPLICANT

PROPERTY OWNER (if different)

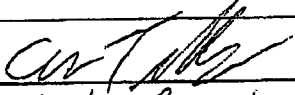
APPLICANT'S NAME: VIBE PROPERTIES LLC	PROPERTY OWNER'S NAME:
ADDRESS: 976 FIERY RUN RD LINDEN, VA 22642	OWNER'S ADDRESS:
PHONE NUMBER: 540-622-6947	PHONE NUMBER:
EMAIL: TBARNHART@VIBEPROP.COM KBARNHART@VIBEPROP.COM	EMAIL:

SECTION A - Property Information

Tax Map No. 20A8 4 29	Zoning District: C-2
Site Address: 120-124 E MAIN ST	
Tourism Zone (check one): ☒ Downtown Business ☐ Entrance Corridor ☐ Community Business	

SECTION B - Project Details

Project Name: 120-124 REHABILITATION
Describe the project, including a description of the proposed or expanded use. FACADE AND WINDOW WORK, INTERIOR UPDATES SUCH AS FLOORING, FIXTURES, LIGHTING, HEATING AND A/C INSTALLATIONS - TO CREATE A DESTINATION RETAIL ENVIRONMENT
What dollar amount of capital investment is proposed (\$25,000 minimum)? \$250,000
How many jobs will be created (1 minimum)? 20+
Please attach supporting documents with this application, including plots, plans, invoices, quotes, or other details that verifies the above information.

Signature of Applicant:  Date: 1/12/2017

Name of Lot Owner (PRINTED): Vibe Properties LLC

Signature of Lot Owner:  Date: 1/12/2017

By the submission of this application, permission is hereby granted to Town Officials and employees to enter upon the subject property during reasonable hours for purposes related to the review of this application. The Applicant will be the designated contact person for this permit application.

March 2015.

AGREEMENT

THIS AGREEMENT, made and dated this _____ day of _____, 2017, by and between **Vibe Properties, LLC**, a Virginia Limited Liability Company, party of the first part, hereinafter referred to as “Vibe Properties”, and the **Town of Front Royal, Virginia**, a municipal corporation, hereinafter referred to as the “Town”.

WHEREAS, Va. Code § 58.1-3851 authorizes localities to establish one or more tourism zones, which tourism zones may grant tax and other incentives, and provide certain regulatory flexibility in said tourism zones.

WHEREAS, the Town of Front Royal has, by the adoption of Town Code Section 75-74, established several Tourism Zones within the Town of Front Royal, which ordinance provides, in relevant part, that:

E. ADMINISTRATION AND INTERPRETATION

- 1. The Town Manager, or designee, is authorized to administer tourism zones.*
- 2. Interpretations of this section shall be determined by the Town Manager, after consultation with the Town Attorney.*
- 3. All eligible businesses must submit an application for tourism zone incentives to the Town Manager's Office.*
- 4. The Town Manager, or designee, shall draft a performance agreement for applicants that qualify for incentives. The performance agreement shall be reviewed by the Town Attorney, Director of Finance, Director of Planning & Zoning, or other departments, authorities, committees, commissions or agencies, as determined appropriate by the Town Manager.*
- 5. Performance agreements shall specify all incentives that are to be authorized and may include conditions of approval, such as, but not limited to, requirements that the applicant maintain certain hours of operation, site improvement requirements, or reduction of incentives from their maximum levels authorized by this section.*
- 6. Incentives are not authorized until a performance agreement is approved by Town Council, and nothing herein shall be interpreted to require or obligate the Town to approving any incentives until a performance agreement is approved by Town Council.*
- 7. Town Council may revoke, reduce, or suspend incentives after approval of the performance agreement if the conditions, or other terms, of the performance agreement are not complied with.*

The provisions of Town Code Section 75-74 are incorporated by reference herein and made a part of this Agreement.

WHEREAS, Vibe Properties has filed a Tourism Zone Application for its property at 205 East Main Street, Tax Map Nos. 20A8 10 6, 20A8 10 4, and 20A8 10 4A (the "Property"), for a project name of "Weaver Building Rehabilitation" (the "Project"), which is located in the Downtown Business Tourism (DBT) Zone.

WHEREAS, the Project that is proposed to be done to the Property, including the proposed use(s), include façade and window improvements, potential interior staircase overhaul and improvements, improvements to the Property's plumbing, lighting, and ventilation systems (the "Improvements"), sufficient to cause the use of the Property to be that of a restaurant and/or retail space. The proposed uses of the Project on the Property are Eligible Types of Land Uses to qualify for incentives under the Town's Downtown Business Tourism (DBT) Zone, as a Tier 2 Tier Group.

WHEREAS, the dollar amount of capital investment that is proposed for the Property is Two Hundred Fifty Thousand Dollars (\$250,000.00).

WHEREAS, the number of jobs that are intended to be created by the Project on the Property is twenty (20) or more jobs.

NOW, THEREFORE, WITNESSETH: that for and in consideration of the foregoing, and in consideration of the economic benefits flowing to both parties as a result of the Project and the improvements to the Property, the parties do agree as follows:

1. Vibe Properties shall receive a 100% reduction in Business and License Occupational License ("BPOL") tax reduction fee for seven (7) years from the date that Vibe Properties applies for a business license at the Property. The BPOL tax reduction shall be based on the estimated increase in BPOL tax, as calculated from the increased revenue generated from the Property after the proposed investment by Vibe Properties as a result of the Project on the Property.
2. Vibe Properties shall receive a Seventy Percent (70%) reduction in permit fees with the Town of Front Royal.

3. Vibe Properties shall be allowed to make payment of required commercial water and sewer utility tap (connection) fees for up to seven (7) years, without interest or other fees, subject to a lien on the Property, or other guarantee satisfactory to the Town.
4. Vibe Properties shall (A) cause the Improvements to be made within a period of one (1) year from the date this Agreement is executed by Vibe Properties and approved by the Town Council of the Town of Front Royal, Virginia; (B) maintain hours of operation whereby commercial operation on the Property are open to the public for at least six (6) hours per day, at least five (5) days per week (subject, however, to closure for reasonable periods of time for needed repairs from Acts of God, normal maintenance, vacations and holidays, or for improvements to the Property which do not cause the Property to lose its qualification for Tourism Zone Incentives in the Downtown Business Tourism (DBT) Zone; and (C) Vibe Properties shall not permit or allow any illegal, dangerous practice or hazardous condition to occur on the Property, shall not violate any State, Federal, or local law concerning the use of the Property, nor permit any illegal activity to occur thereon, except as set forth herein, nor create or allow any nuisance to be or remain upon the Property.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

VIBE PROPERTIES, LLC (SEAL)

By: _____ (SEAL)
Managing Member

TOWN OF FRONT ROYAL, VIRGINIA (SEAL)

BY: _____
TOWN MANAGER

Approved as to form: _____
Town Attorney Date

TOURISM ZONE APPLICATION

TOWN OF FRONT ROYAL - 102 East Main Street, Front Royal, Va. 22630 ~ 540-635-8007

APPLICANT

PROPERTY OWNER (if different)

APPLICANT'S NAME: VIBE PROPERTIES LLC	PROPERTY OWNER'S NAME:
ADDRESS: 976 FIERY RUN RD LINDEN, VA 22642	OWNER'S ADDRESS:
PHONE NUMBER: 540-622-6947	PHONE NUMBER:
EMAIL: TBARNHART@VIBEPROP.COM KBARNHART@VIBEPROP.COM	EMAIL:

SECTION A - Property Information

Tax Map No. 20A8106 (Also 20A8-104)	Zoning District: C-2
Site Address: 205 E. MAIN ST	
Tourism Zone (check one): ☒ Downtown Business ☐ Entrance Corridor ☐ Community Business	

SECTION B - Project Details

Project Name: WEAVER BUILDING REHABILITATION
Describe the project, including a description of the proposed or expanded use. FACADE AND WINDOW WORK, POTENTIAL INTERIOR STAIRCASE OVERHAUL, PLUMBING, LIGHTING AND VENTILATION IMPROVEMENTS - TO BE UTILIZED FOR RESTAURANT OR RETAIL SPACE
What dollar amount of capital investment is proposed (\$25,000 minimum)? \$250,000
How many jobs will be created (1 minimum)? 20+
Please attach supporting documents with this application, including plats, plans, invoices, quotes, or other details that verifies the above information. TBD

Signature of Applicant: *Carl Triller* Date: 1/12/2017
Name of Lot Owner (PRINTED): Vibe Properties LLC
Signature of Lot Owner: *Carl Triller* Date: 1/12/2017

By the submission of this application, permission is hereby granted to Town Officials and employees to enter upon the subject property during reasonable hours for purposes related to the review of this application. The Applicant will be the designated contact person for this permit application.

March 2015.

SURVEY OF T.M. SECTION 20A8-10 PARCELS 4, 4A AND 6
SOUTH RIVER MAGISTERIAL DISTRICT PER PLAT IN INST.# 040002428

TOWN OF FRONT ROYAL

WARREN COUNTY, VA.

NO TITLE REPORT FURNISHED TO THIS OFFICE.
SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.
DERIVATION OF TITLE TO: CLOVERDALE LIMITED PARTNERSHIP
PER INSTRUMENT # 040002428.
PROPERTY SHOWN IN ZONE X PER FIRM
MAP NO. 51187C0112C EFFECTIVE DATE JUNE 3, 2008.
PROPERTY ZONED C-2.

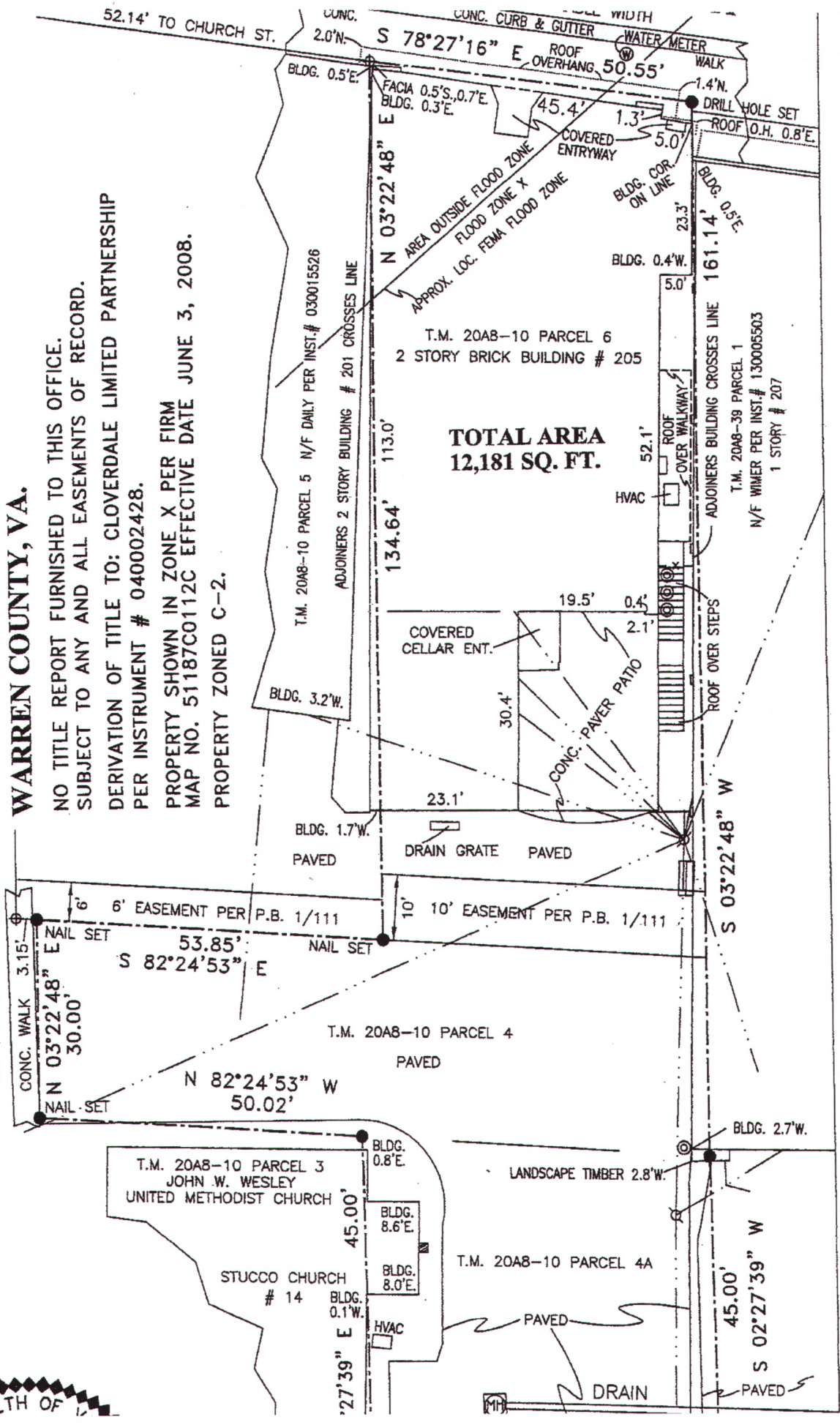
PER INST.# 040002428



SCALE 1" = 20'

CHURCH STREET

VARIABLE WIDTH



Text in effect from and after July 1, 2013

Title 58.1 Taxation

Chap. 38 Miscellaneous Taxes, §§ 58.1-3800 — 58.1-3853

Art. 10 Local Tourism Zone, §§ 58.1-3851 — 58.1-3851.2

§ 58.1-3851. Creation of local tourism zones. —

A. Any city, county, or town may establish, by ordinance, one or more tourism zones. Each locality may grant tax incentives and provide certain regulatory flexibility in a tourism zone.

B. The tax incentives may be provided for up to 20 years and may include, but not be limited to (i) reduction of permit fees, (ii) reduction of user fees, and (iii) reduction of any type of gross receipts tax. The extent and duration of such incentive proposals shall conform to the requirements of the Constitutions of Virginia and of the United States.

C. The governing body may also provide for regulatory flexibility in such zone that may include, but not be limited to (i) special zoning for the district, (ii) permit process reform, (iii) exemption from ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), or the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq.), and (iv) any other incentive adopted by ordinance, which shall be binding upon the locality for a period of up to 10 years.

D. The establishment of a tourism zone shall not preclude the area from also being designated as an enterprise zone. (2006, c. 642; 2008, c. 462; 2013, cc. 756, 793.)

History

Jeremy Camp
Town of Front Royal
P.O. Box 1560
Town Administration Building
102 East Main Street
Front Royal, Virginia 22630-1560

June 13, 2017

Dear Jeremy,

Vibe Properties, LLC, would like to inform you of an update to our Tourism Zone Application for our properties at 120-124 East Main Street and 205 East Main Street. We now are projecting that we will invest at least \$500,000 in improvements at 120-124 East Main Street and at least \$450,000 in improvements at 205 East Main Street. Those numbers could go higher as we proceed, and we will keep you informed as we get new information. We will also provide you with a more accurate breakdown of our investments as the projects come to a close.

Thank you for your assistance in this matter.

Sincerely,



Kerry Barnhart
President, Vibe Properties, LLC

75-74 TOURISM ZONE INCENTIVES (Adopted 3-23-15)

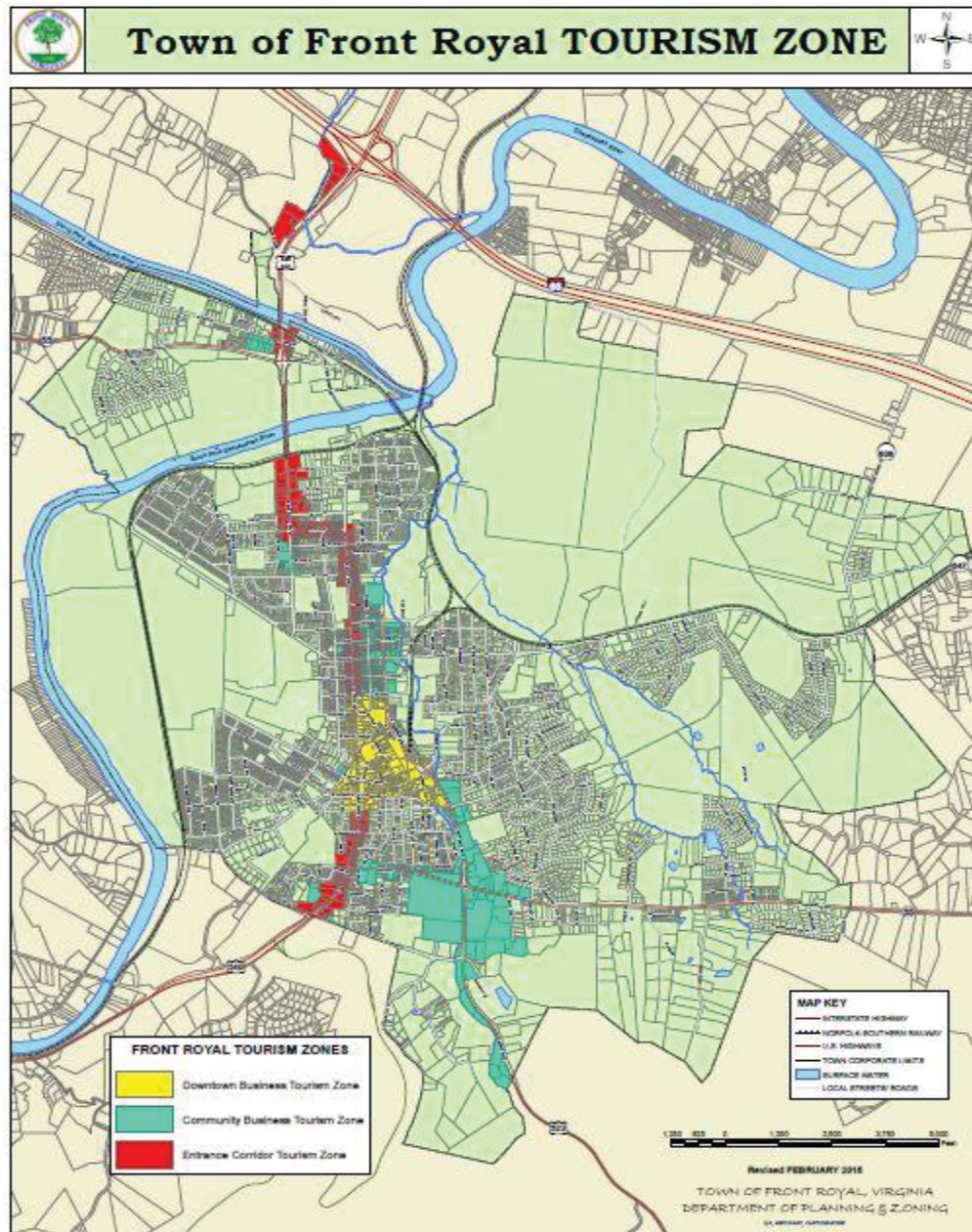
A. PURPOSE. The purpose for creating tourism zones is to encourage certain types of business growth in the Town that will attract visitors to the Town, increase tax revenue, and enhance the general welfare of Town citizens. Virginia Code §58.1-3851 grants the Town with the legal authority to establish tourism zones and grant tax incentives and regulatory flexibility therein.

B. ESTABLISHMENT OF TOURISM ZONES.

1. Downtown Business Tourism (DBT) Zone Created. There is hereby established the “Downtown Business Tourism Zone,” consisting of all the area designated as such on the map entitled “Town of Front Royal Tourism Zone,” dated February 2015, attached hereto and incorporated herein. The intent of the Downtown Business Tourism Zone is to achieve the overall purpose of Section 75-74.A. by encouraging business growth and housing that enhances the unique character and assets of the downtown area.

2. Entrance Corridor Tourism (ECT) Zone Created. There is hereby established the “Entrance Corridor Tourism Zone,” consisting of all the area designated as such on the map entitled “Town of Front Royal Tourism Zone,” dated February 2015, attached hereto and incorporated herein. The intent of the Entrance Corridor Tourism Zone is to achieve the overall purpose of Section 75-74.A. by encouraging business growth that enhances the unique character and assets of the entrance corridor area.

5. Community Business Tourism (CBT) Zone Created. There is hereby established the “Community Business Tourism Zone,” consisting of all the area designated as such on the map entitled “Town of Front Royal Tourism Zone,” dated February 2015, attached hereto and incorporated herein. The intent of the Community Business Tourism Zone is to achieve the overall purpose of Section 75-74.A. by encouraging general business growth in the Town of Front Royal that supports tourism.



C. ELIGIBILITY REQUIREMENTS.

1. **ELIGIBLE USES BY TOURISM ZONE.** The following land uses, as categorized within by each tourism zone, are eligible to receive the tourism zone incentives of Section 75-74.D., subject to compliance with all other code requirements of the Town Code.

TABLE 75-74.C.1.

SPECIFIC TOURISM ZONE	ELIGIBLE TYPE OF LAND USES
<u>Downtown Business Tourism (DBT)</u>	Retail Dining Lodging Entertainment* Culture & Arts Personal Services & Offices Condominiums**
<u>Entrance Corridor Tourism (ECT)</u>	Retail Dining Lodging Entertainment* Culture & Arts
<u>Community Business Tourism (CBT)</u>	Retail Dining Lodging Entertainment* Personal Services & Offices

*Including both outdoor and indoor uses, but excluding adult entertainment uses.

** Excluding such uses that are located on the ground level.

2. INVESTMENT CRITERIA. Eligible land uses, as specified under Section 75-74.C.1, shown above, are eligible to receive the tourism zone incentives of Section 75-74.D., shown below, only if all of the following criteria is met.

- a. A minimum new capital investment of \$25,000.
- b. A minimum creation of one new (1) job.
- c. Conformance with the Town's Comprehensive Plan.
- d. Compliance with the Town Code.

D. INCENTIVES.

1. BPOL Tax Incentive. BPOL Tax may be reduced for eligible land uses that meet the investment criteria, as specified under 75-74.C.2.

- a. Eligible land uses shall be categorized into one of the following three (3) tier groups, depending on the amount of capital investment and quantity of jobs created.

TABLE 75-74.D.1.a.

Tier Group	Capital Investment	Jobs Created
Tier 1	\$10,000 - \$99,999	1-3
Tier 2	\$100,000 - \$499,999	4-10
Tier 3	\$500,000 or more	11 or more

b. The following table illustrates the duration that eligible land uses may receive BPOL tax reduction, based on the tier group they qualify for.

TABLE 75-74.D.1.b.

YE R	1	2	3	4	5	6	7	8	9	10	11 +
Tier 1	✓	✓	✓	✓	X	X	X	X	X	X	X
Tier 2	✓	✓	✓	✓	✓	✓	✓	X	X	X	X
Tier 3	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X

Note: X = not eligible; ✓ = Eligible.

c. Eligible land uses may receive up to 100% BPOL tax reduction for the number of specified years they qualify for under Table 75-74.D.1.b.

d. BPOL tax reduction is based on the estimated increase in BPOL tax, as calculated from estimated increased revenue after the proposed investment. BPOL tax reduction shall not apply to existing BPOL tax prior to the specific investment.

2. Permit Fee Incentive. All eligible land uses may receive up to 100% reduction in permit fees with the Town of Front Royal.

3. Tap Fee Incentive. Eligible commercial land uses may be allowed to make payment of required tap fees over a period of time that does not exceed ten (10) years, without interest or fees, subject to a lien on the property, or other guarantee, for the specified time period. Eligible residential land uses may be allowed to delay payment of required tap fees at a point of time agreeable to the Town of Front Royal, but before all dwelling units are occupied, subject to a lien on the property, or other guarantee, for the specific time period.

E. ADMINISTRATION AND INTERPRETATION

1. The Town Manager, or designee, is authorized to administer tourism zones.
2. Interpretations of this section shall be determined by the Town Manager, after consultation with the Town Attorney.
3. All eligible businesses must submit an application for tourism zone incentives to the Town Manager's Office.
4. The Town Manager, or designee, shall draft a performance agreement for applicants that qualify for incentives. The performance agreement shall be reviewed by the Town Attorney, Director of Finance, Director of Planning & Zoning, or other departments, authorities, committees, commissions or agencies, as determined appropriate by the Town Manager.
5. Performance agreements shall specify all incentives that are to be authorized and may include conditions of approval, such as, but not limited to, requirements that the applicant maintain certain hours of operation, site improvement requirements, or reduction of incentives from their maximum levels authorized by this section.
6. Incentives are not authorized until a performance agreement is approved by Town Council, and nothing herein shall be interpreted to require or obligate the Town to approving any incentives until a performance agreement is approved by Town Council.
7. Town Council may revoke, reduce, or suspend incentives after approval of the performance agreement if the conditions, or other terms, of the performance agreement are not complied with.

(Added Entire Section 3-23-15-Effective Upon Passage)

75-75 HISTORIC DISTRICT INCENTIVES FOR REHABILITATION

- A. A partial exemption of real estate taxes for a period of ten (10) years shall be provided for the substantial rehabilitation of any structure [fifty (50) years or older] within a designated historic resource overlay area or to a structure which is listed on the National Register of Historic Places. For the purposes herein, substantial rehabilitation shall involve an investment of at least forty percent (40%) of the pre-rehabilitated assessed value of the structure.
- B. The partial exemption shall be equal to the increase in assessed value resulting from the rehabilitation. Rehabilitations cannot replace the original structure. Increases in total square footage may be permitted up to a maximum of fifty (50%) percent of the original structure.
- C. The exemption shall commence on January 1 of the year following completion of the rehabilitation and shall run with the real estate for a period of ten (10) years. An increase in an assessment occurring after the first year of the exemption shall not result in an increase in the exemption.

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Town of Front Royal, Virginia Work Session Agenda Form

Date: June 19, 2017

Agenda Item: 2017 At-Risk Structures
Director of Planning & Zoning

Summary:

The purpose of this agenda item is to provide Town Council with an updated list of “At-Risk” structures in the Town of Front Royal. “At-risk” structures refers to buildings in the Town that are vacant and blighted. Of those structures, those that are unsecure are listed as potential public nuisances. A list is provided to Town Council on an annual basis.

None of the listed structures were determined by the Warren County Building Official as structures that “might endanger the public health or safety,” in accordance with Town Code 9-1. Nonetheless, the structures are vacant and blighted and some are unsecure. Most have active or recently closed code enforcement cases.

In 2017 there are fifteen (15) structures on the list. Two (2) structures were removed from the list in 2016, and two (2) were added.

Council Discussion: This agenda item is scheduled for a work session on June 19, 2017.

Staff Evaluation: Staff will be available at the work session for questions. The property maintenance code recommended by the Planning Commission is scheduled to come before Town Council in July.

Budget/Funding: N/A

Legal Evaluation: The Town Attorney will be available at the work session for questions.

Town Manager: The Town Manager will be available at the work session for questions.

Council Recommendation:

☐ Additional Work Session ☐ Regular Meeting ☐ No Action
Consensus Poll on Action: ____ (Aye) ____ (Nay)



2017 AT-RISK STRUCTURES

ADDRESS	STATUS						
	Vacant	Blighted	Unsecure	Possible Public Nuisance	Status/Notes	Demolished	Renovated
1 Depot Ave.	Yes	Yes	Yes, Door Broken	Yes	High Grass violation, owner fixing and fixing door as of June 12, 2017	--	--
514 S. Royal Ave.	Yes	Yes	No	--	Simonpietri	--	--
202 E. 6 th St.	Yes	Yes	No	--	Floodway	--	--
2 E. Main St. (Afton Inn)	Yes	Yes	No	--	EDA in process of selling and grant seeking.	--	--
305 W. 9 th Street	Yes	Yes	No	--	Property is for sale.	--	--
339/341 Osage Street	Yes	Yes	No	Yes, hole in roof	Warren County Building Inspections closed case after building was determined to be secured.	--	--
11 E Prospect*	Yes	Yes	Partial	Yes	High Grass, Town cut June 2017. Broken window (x2)	--	--
528 S. Royal Ave	Yes	Yes	No	--	Simonpietri	--	--
319 Pine Street*	Yes	Yes	No	--	High Grass, Town cut June 2017	--	--
355 Osage Street	Yes	Yes	No	--	High Grass, Town cut June 2017	--	--
349 Osage Street	Yes	Yes	No	--	High Grass, Town cut June 2017	--	--
346 Pine Street	Yes	Yes	No	--	High Grass, 3 INOPs	--	--
734 Parkview Drive	Yes	Yes	No	---	Partially constructed porch	--	--
1858 N Royal Ave.	--	--	--	--	Destroyed by Emergency Services in fire training exercise. Debris remaining.	YES	--
1854 N. Royal Ave.	--	--	--	--	Recently damaged severely by fire. Debris remaining.	YES	--
1847 N. Royal Ave. (VFW)	--	--	--	--	Removed from list in 2017.	YES	--
24 W. Stonewall Ave.	No	No	No	--	Removed from list in 2017.	--	--

* = New Additions to list. ~~Strikethrough~~ = removed from list.

2017 AT-RISK STRUCTURES - PHOTOS

ADDRESS	PHOTO
1 Depot Ave. Owner: CLINE BEVERLY S	
514 S. Royal Ave. Owner: SIMONPIETRI DON F,BARRY,CHRISTOPHER	
202 E. 6th St. Owner: GILLIAM LAURA A	

**2 E. Main St.
(Afton Inn)**

Owner:

IND DEV AUTH OF TOWN
OF FRONT



305 W. 9th Street

Owner:

MC CARTY DOUGLAS N ET
AL



339/341 Osage Street

Owner:

GOCHENOUR GREGORY A



11 E Prospect*

Owner:

DEUTSCHE BANK NATL
TRUST



528 S. Royal Ave

Owner:

SIMONPIETRI DON
F,BARRY,CHRISTOPHER



319 Pine Street*

Owner:

JACKSON JESSE W ET AL



355 Osage Street

Owner:

WULP WILLIAM TTEE



349 Osage Street

Owner:

HUTCHINSON THOMAS



346 Pine Street*

Owner:

ROBINSON CLARENCE T



734 Parkview Drive

Owner:

FLETCHER SAMUEL D



1858 N Royal Ave.

Owner:

A FOX LLC



1854 N. Royal Ave.

Owner:

A FOX LLC



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