

The regular meeting of the Town Council of the Town of Front Royal, Virginia was held on August 24, 2009, in the Warren County Government Center's Board Meeting Room. Mayor Tewalt led Council and those attending in the Pledge of Allegiance to the flag and a Moment of Silence. The roll was called at 7:00 p.m.

PRESENT: Mayor Eugene R. Tewalt
Vice Mayor Bret W. Hrbek
Councilman Thomas H. Sayre
Councilman Carson C. Lauder, Jr.
Councilman Chris W. Holloway
Councilman N. Shae Parker
Town Manager J. Michael Graham
Town Attorney Thomas R. Robinett
Clerk of Council Jennifer E. Berry

ABSENT: Councilman Thomas E. Conkey

(The above listed members represent the full body of Council as authorized in the Town Charter.)

Vice Mayor Hrbek moved that Council approve the Regular Council Meeting minutes of August 10, 2009 as presented.

Vote: Yes – Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – Conkey
(Mayor Tewalt did not vote as there was no tie to require his vote)

RECEIPT OF PETITIONS OR CORRESPONDENCE FROM THE PUBLIC

There were no receipts of petitions or correspondence from the public.

REPORT OF THE MAYOR, COUNCIL & STAFF

During his report, Town Manager Graham noted:

- Town crews would be repairing valves located on Robinhood Lane this Saturday, August 29;
- The Commerce Avenue sidewalk section was now complete and sidewalks stretched the entire length of the Town;
- The Town will be working on the light at Water Street & Commerce Avenue;
- The Speed limit on the bridge was handled by VDOT, who could be reached at #800 654-7008, Mr. Jeff Lineberry;
- Soon the South Fork Bridge would be inspected in order to fully evaluate the condition of the bridge; and
- Recently a Winchester elected official complimented how the Town appeared.

Councilman Sayre noted that he also spoke with a citizen regarding the bridge area speed limits. He stated that the bridge was completed nicely, including the incorporation of the bike lane design.

Mr. Glenn White, Warren County Board Supervisor, gave an update on the Front Royal-Warren County Airport, noting:

- While the airport had been neglected, over the last year and a half, the airport had become a developmental asset to the Town and County;
- They now need to spend money in order to attract companies to the Front Royal-Warren County area;
- The Virginia Department of Aviation granted funds to enhance the airport;
- A substantial display was assembled for and presented at the Warren County Fair recently with great interest;
- The Board of Supervisors recognized that in order to have the airport to break even, they will need to build new hangars; and
- The 2010 Airshow would be held this year for one day, last year's three day event was canceled due to weather. He gave information on the event and encouraged the members of Council to volunteer.

Mr. Graham noted that the Solar Electric Power Association representative, Christy Herig, had been rescheduled to speak before Council in September.

Jennifer McDonald, Executive Director of the Economic Development Authority (EDA), noted that:

- James Madison University would be placing their equipment in the coming week;
- They continued their work with Lord Fairfax Community College;
- The EDA was working with SolAVerde to achieve their solar power goals;
- Recently National Geographic produced a great article regarding solar power, she noted that copies could be available to Council should they wish to have them;
- Currently the EDA was working with two active prospects with a total of over 300 jobs possible; and
- They were cooperating with the Chamber of Commerce and the Small Business Development Center regarding the next seminar series for small businesses.

Councilman Lauder requested that the article be copied and given to the members of Council when available.

Councilman Sayre mentioned that tax breaks, for example, were very important portion of competition when new businesses were moving into an area. He voiced support of maintaining businesses in the area long term, not only during the time their benefits were in place. Ms. McDonald noted that one of their goals is to retain the businesses currently in place in the Front Royal-Warren County area. She added that it was just as important, if not more so, to retain the existing businesses in the community.

Vice Mayor Hrbek noted that he received a compliment earlier in the day regarding the Town wide improvements in the community.

Vice Mayor Hrbek asked that a future worksession include discussion relating to possible Historic District incentives.

Vice Mayor Hrbek read the following as a reminder regarding the Happy Creek Corridor issue:

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Town of Front Royal

 **Water & Sewer Policy** 

Approved by Town Council on September 25, 2006

In light of Warren County’s request for an understanding of availability of water and sewer extensions into the County by the Town of Front Royal, and procedures for requesting these services, the Town Council of Front Royal has formulated, at least, part of these policies and procedures:

- The contact person for the Town is the Town Manager. Any request for water and/or sewer services must be made in writing to the Town accompanied by a joint request from the property owner and the County for the property to be boundary adjusted into the Town’s corporate limits. Such request must be made **prior** to a rezoning action by the County.
- The Town will decide on a case-by-case basis whether to provide water and sewer to the proposed development as well as whether a boundary adjustment is appropriate.
- The Town will consider the appropriate zoning classification of the property to be boundary adjusted and will complete a rezoning of the property to the classification deemed appropriate by the Town Council either as a part of the boundary adjustment agreement, or through a standard zoning public hearing process.
- In any case of rezoning by the Town, the Town Council will negotiate for proffers deemed necessary to mitigate the impact of the development on County services, before the Town determines and negotiates what proffers are necessary for the Town. These decisions

shall be made before the Town's rezoning of the development is completed.

- The Town may elect to provide water and/or sewer services without a boundary adjustment where the Town council determines it would not be financially feasible to provide other Town services to the property.
- The Town presently has no intention of extending water and sewer lines into the unincorporated portion of the County at the Town's expense.
- The Town presently has no desire to sell water for resale.
- Where a request for water and/or sewer services is not a part of a rezoning request, the Town may provide water and/or sewer service into the County on a case-by-case basis under the same terms as it has done in the past.

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Councilman Lauder requested that a copy of the Water & Sewer Policy be placed in the Council packets.

Councilman Sayre announced that Jennifer Berry, the Clerk of Council, had received a scholarship in order to attend the Clerk Institute held by Old Dominion University.

Councilman Sayre noted that the On the River event was quite successful. He noted that the event was well attended and enjoyed by all present. He commended those involved in the event planning and organization.

Councilman Lauder congratulated Mrs. Berry on her scholarship for the Clerk Institute.

Councilman Lauder noted that rather than removing the dam, perhaps signs and cords could be put in place and other aspects could be used to preserve the structure. He suggested fines to be imposed if individuals entered the area.

Vice Mayor Hrbek reminded the public that school would begin in two days and to be cautious of the children within the community by obeying the speed limits in place.

Councilman Sayre asked about the issue relating to America House. Joseph Waltz, Director of Energy Services, stated that they were continuing to work with the organization, noting that it seems to be isolated to their facility.

Mayor Tewalt thanked Vice Mayor Hrbek for leading the last meeting. He noted that the On the River event reports were very positive. He added that he hopes that the event grows and continues in coming years. Mayor Tewalt congratulated those that won the paddle contest and the VFW for their success with the food service offered.

Mayor Tewalt asked if there were any proposals for additions or deletions to the agenda.

CONSENT AGENDA:

- A. COUNCIL APPROVAL: Bid – Asphalt Slurry Seal Application
- B. COUNCIL APPROVAL: Dept. of Motor Vehicles (DMV) Grant – Police Department

Vice Mayor Hrbek moved that Council approve the consent agenda as presented.

Mayor Tewalt asked if any item on the Consent Agenda should be removed for discussion and a separate vote.

Vote: Yes – Holloway, Hrbek, Lauder, Parker and Sayre
 No – N/A
 Abstain – N/A
 Absent – Conkey
 (Mayor Tewalt did not vote as there was no tie to require his vote)
 (On Consent Agenda Items)

COUNCIL APPROVAL – An Ordinance to Amend , Adopt and Re-Ordain Sections 180-185.1 through 180-185.21 of the Town Code to Grant a Franchise for the Operation of a Public Passenger Bus Service to Virginia Regional Transit (2nd/Final Reading)

Councilman Parker moved that Council adopt on its second and final reading an ordinance to Amend, Adopt and Re-Ordain Sections 180-185.1 through 180-185.21 of the Town Code to grant a franchise for the operation of a Public Passenger Bus Services to Virginia Regional Transit.

Vote: Yes – Holloway, Hrbek, Lauder, Parker and Sayre
 No – N/A
 Abstain – N/A
 Absent – Conkey
 (Mayor Tewalt did not vote as there was no tie to require his vote)

☞ ORDINANCE – TRANSIT BUS (FRAT Bus) ☞

An Ordinance to Amend, Adopt and Re-Ordain Sections 180-185.1 through 180-185.21 of the Town Code to Grant a Franchise for the Operation of a Public Passenger Bus Service to Virginia Regional Transit (FRAT Bus)

WHEREAS, pursuant to Virginia State Code Section 15.2-2100 et seq., Section 5311 of the Federal Surface Transit Efficiency Act, and the Virginia Regional

Transit Association proposes to operate a public passenger bus system within the Town of Front Royal; and

WHEREAS, after public hearing the Town Council desires to award a franchise to the Virginia Regional Transit Association to operate a public passenger bus system within the Town of Front Royal, under terms to be adopted by ordinance;

NOW, THEREFORE, BE IT ENACTED by the Town Council of Front Royal, Virginia pursuant to Section 15.2-2100 et seq. and Section 18(19) of the Town Charter that the Virginia Regional Transit Association is hereby granted a franchise to operate a public passenger bus system within the Town of Front Royal, under the following terms and conditions by the amendment and re-adoption of Sections 180-185.1 through 180-185.21 of the Town Code to read as follows:

§ 180-185.1 FRANCHISE GRANTED

The Virginia Regional Transit Association, hereinafter known as “VRTA”, its lessees, successors and assigns, for the term and subject to the conditions and limitations hereinafter stated, is hereby granted a franchise to occupy and use the streets, roads, avenues, alleys and other public places of the Town of Front Royal, Virginia, and to designate, maintain and use adjacent sidewalks for the operation of public passenger bus transit services to the people of Front Royal utilizing the FTA 5311 Rural Transit Program (Section 5311 of the Federal Surface Transit Efficiency Act). ~~and a Virginia Demonstration grant project.~~

§180-185.2 PURPOSE OF THE FRANCHISE

The purpose of the franchise is to permit VRTA—the right and privilege of operating a public passenger bus transit service consisting of one or more passenger buses or mini-buses, wheelchair lift equipped and ADA compliant, driven by VRTA—employed drivers with commercial driver’s licenses, within the Town of Front Royal, and such portions of Warren County as the Town, the County, and VRTA—shall mutually agree, subject to the conditions and agreements as hereafter set forth.

§ 180-185.3 TERM OF FRANCHISE

The term of the franchise shall be for a period of five (5) years and three (3) months from the effective date of this Ordinance.

§ 180-185.4 BUSES

For the purpose of providing public passenger bus service, VRTA is authorized to operate buses capable of seating a minimum of thirteen (13) and a maximum of thirty-five (35) passengers along one or more routes to be determined by the Town following route surveys made by VRTA. The buses shall be equipped with wheelchair lifts and shall be compliant with the Americans with Disabilities Act. The buses shall bear the name **Front Royal Area Transit or FRAT**, and shall be decorated with such other logos or insignias as shall be prescribed by Town Council. VRTA shall perform such routine and appropriate maintenance of its bus(es) as shall be necessary to ensure uninterrupted, safe and effective service of this Franchise. VRTA shall further employ drivers who have been appropriately trained and licensed for the operation of public passenger-buses,

who have been made familiar with the Town of Front Royal and the route(s) established therein, who have been submitted to a criminal background investigation, initial drug screening, and who are subject to periodic random drug testing pursuant to Federal regulations.

§ 180-185.5 REPAIRS

VRTA shall promptly repair or replace any sidewalk, street, or other property of the Town which may be damaged or displaced by VRTA in the operation of its public bus system. In the event that VRTA fails or refuses to repair any damage to the property of the Town of Front Royal upon ten (10) days written notice to VRTA, the Town may then undertake to repair or replace any damaged or displaced Town property, and the expense of such repairs or replacement shall be paid to the Town by VRTA, and may be recovered in any manner prescribed by law, including application of the performance bond imposed hereunder.

§ 180-185.6 INDEMNIFICATION

VRTA agrees and bonds itself, by the acceptance of this Ordinance, to indemnify, keep and hold the Town of Front Royal free and harmless from liability on account of injury to persons or property growing out of the negligence of VRTA, or its employees, or agents in the operation of its public bus service. Nothing herein, however, shall be construed to render VRTA liable for the negligence of the Town of Front Royal, its agents or employees, or the negligence of other persons or entities.

§ 180-185.7 MAINTENANCE

The rights and privileges set forth herein are granted to VRTA upon the expressed condition and understanding that VRTA will maintain its vehicles located within the Town of Front Royal in good and safe repair and order at all times during the terms of this Franchise Agreement.

§ 180-185.8 INSPECTIONS

The Town of Front Royal, its employees or agents, shall have the right at any time to make inspections, upon reasonable notice, of VRTA's buses or any part thereof.

§ 180-185.9 ANNUAL PAYMENT AND OPERATION

VRTA's operation under this Franchise Agreement shall be subject to an annual payment to the Town of Front Royal of **ONE DOLLAR (\$1.00)**. The cost of operation of the Franchise shall be borne as follows:

- (A) In the first year of operation (~~July 1st, 2004 – September 30th, 2005~~) ~~ninety five percent (95%)~~ **(October 1, 2009 and ending September 30, 2014), sixty-eight percent (68%)** of the hourly costs of the operation, as invoiced from VRTA to the Town, shall be paid to VRTA by Federal and State contributions under the FTA 5311 Program and the Virginia Demonstration grant project. ~~Five percent (5%)~~ **Thirty-two percent (32%)** of the hourly costs shall be paid to the VRTA by the Town of Front Royal from such general funds as may be required to total the ~~five percent (5%)~~ **thirty-two percent (32%)** local match.

~~(B) In the second year through the fifth year of operation (October, 1st, 2005 – September 30th, 2009) seventy five percent (75%) of the hourly costs of the operation, as invoiced by VRTA to the Town, shall be paid to the VRTA by Federal and State contributions under the FTA 5311 Program and the Virginia Demonstration grant project. Twenty five percent (25%) of the hourly costs shall be paid to the VRTA by the Town of Front Royal from such general funds as may be required to total the twenty five percent ((25%) local match.~~

~~(C) (B) VRTA shall purchase one or more buses for the operation of the Franchise. VRTA shall bear eighty-five percent (85%) of the cost to purchase, equip and decorate the bus(es) and the Town shall contribute to VRTA fifteen percent (15%) of the cost thereof. (said 15% estimated to be approximately \$8,250.00 in the first year of operations.)~~

~~(D) (C) VRTA shall replace its bus(es) used under this Franchise upon the later of three (3) years of service or 150,000 miles traveled. Each party shall bear the same proportion of the cost of replacement as is prescribed for the initial bus purchase in Subsection (C) (B) above.~~

~~(E) (D) In the event that VRTA fails to receive funds for the cost of operation of the franchise in accordance with the payment schedule set forth above, and then VRTA shall have the right to terminate the operation of the franchise upon thirty (30) days prior written notice to the Town.~~

§ 180-185.10 PASSENGER FARES

~~VRTA drivers shall collect from each passenger a fare to be set and determined by the Town Council by resolution. In setting fares, the Town Council may establish separate rates for adults, senior citizens, persons with physical disabilities, students and children. Town Council may provide for the advance purchase of tickets or tokens to be used for the payment of fares by passengers.~~

§ 180-185.11 SCHEDULES

~~VRTA's bus(es) shall operate on such schedule(s) as shall be established and adopted by the Town Manager or his designee, pursuant to route surveys completed by VRTA or by demand or both.~~

§ 180-185.12 ROUTES AND STOPS

~~VRTA's bus(es) shall operate on such route(s) and regularly make such scheduled stops at locations established by the Town Manager or his designee, pursuant to route surveys completed by VRTA or by demand or both. VRTA shall be responsible for the marking of regular bus stops by appropriate signage containing route name or number and schedule for stop, as shall be appropriate.~~

§ 180-185.13 COMPLIANCE WITH LAWS

~~VRTA and its drivers shall comply with all state and local traffic, registration, licensing and inspection laws, including, but not limited to, Sections 46.2-107, 46.2-694 and 46.2-695 of the Code of Virginia (1950), as amended.~~

§ 180-185.14 INSURANCE

VRTA, as a condition of franchise approval, shall obtain and maintain throughout the term of this franchise a General Liability insurance policy in the amount of not less than TEN MILLION DOLLARS (\$10,000,000.00) from an insurance provider approved to do business within the Commonwealth of Virginia, and shall name the Town of Front Royal as an additional insured party.

§ 180-185.15 BOND

VRTA, as a condition of franchise approval, shall execute a bond in the amount of ONE THOUSAND DOLLARS (\$1,000.00) with security acceptable to the Town of Front Royal to ensure VRTA's satisfactory performance of its obligations under this Franchise.

§ 180-185.16 GOVERNING LAW

In any controversy or dispute concerning the terms of the franchise, the laws of the State of Virginia shall apply.

§ 180-185.17 SEVERABILITY

In the event that any section, subsection, sentence, clause, phrase or a portion of the Franchise Ordinance is for any reasons held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and will be severed from all other portions without affecting the validity of the remainder.

§ 180-185.18 EQUAL OPPORTUNITY REQUIRED

VRTA shall not refuse to hire or employ, nor bar nor discharge from employment, nor discriminate against any person, because of sex, race, creed, religion, age or national origin.

§ 180-185.19 SUCCESSORS OR ASSIGNEES

The rights, privileges and obligations hereby granted to VRTA may not be assigned without express written consent of the Town Council.

All the rights and privileges hereby granted to VRTA may be exercised by any successor or assignee of VRTA, but said successor or assignee shall be subject to the provisions, obligations, stipulations and requirements hereby prescribed. The Town reserves the right to increase the required performance bond imposed hereunder for any successor or assignee.

§ 180-185.20 FRANCHISE RIGHTS

The Town of Front Royal grants to VRTA an exclusive franchise for the operation of a public passenger bus service and for no other purpose.

§ 180-185.21 REMEDIES

A. The sole remedy for any violation of this Franchise shall be limited to the following. Upon the occurrence of any uncured default in the obligations of the Franchisee, Town shall have the right:

- (1) To compel the Franchisee by mandamus or injunction to cure and correct any violation or default of the terms and obligations of this Franchise;

- (2) To suspend or revoke the Franchise. Upon such revocation, the Franchise shall be automatically deemed null and void and have no force or effect, and Franchisee shall remove its equipment from Town as and when requested by Town.
- B.** In the event that the Town believes that grounds for suspension or revocation exist or have existed the Town may notify the Franchisee in writing set forth the nature and facts of such non-compliance. If within thirty (30) days following such written notification that the Franchisee has not furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that the alleged violations did not occur, or that the alleged violations were beyond the Franchisee's control, the Town shall publish a notice setting forth the time, place, and general purpose of a public hearing to consider suspension or revocation of the Franchise at least ten (10) days before such hearing in a newspaper of general circulation within the Town, and shall give the Franchisee notice of such hearing at least ten (10) days prior to such public hearing. The Franchisee and any interested person shall be entitled to be heard at such hearing. Upon a finding by the Town Council of uncorrected defaults in the terms and obligations under this Franchise, the Council shall have the option to suspend or revoke the Franchise.

This Ordinance shall be effective October 1st, 2009.

COUNCIL APPROVAL – Real Estate and Personal Property Tax Twice a Year Billing
OR Continue with Current Once a Year Billing

Councilman Sayre moved that Council approve twice a year billing for Real Estate and Personal Property Taxes beginning with the calendar year 2010 and instruct Staff to begin the process as presented.

Vice Mayor Hrbek voiced support of moving forward with the proposal to place the Town in line with the County of Warren regarding tax billing for the convenience of the citizens.

Councilman Parker noted that it had been suggested that a portion of the funds could be used to pay for any increased costs for the change in the process. Mr. Hrbek stated that it was not included in the motion presented. Mr. Graham noted that it could be worked on in the future if need be.

Vice Mayor Hrbek clarified that the pre-payment of the taxes, could be used to offset the additional administration costs of the program. He added that perhaps in the future the Town would have more electronic functions in place, which would save time and money.

Councilman Sayre asked about having the billing sent just once, rather than two sets of bills. He recommended contacting Delegate Athey to change the billing requirement to one Mr. Sayre knew of previously. Councilman Sayre stated that a small discount could be given for

those who pay in full the first billing cycle. Councilman Holloway noted that Staff had advised Council that individuals could pay the full amount up front, though no discount would be given.

Vote: Yes – Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – Conkey
(Mayor Tewalt did not vote as there was no tie to require his vote)

COUNCIL AUTHORIZE TO ADVERTISE FOR PUBLIC HEARING – An Ordinance to Allow a Fee to be Charged for Rental of a Town Dumpster

Councilman Holloway moved that Council instruct Staff to advertise for public hearing an ordinance that would allow a fee to be charged for rental of a Town 40-yard dumpster to individuals/businesses.

Vice Mayor Hrbek noted that he would vote against the matter as there were private organizations who rented dumpsters and the Town need not get involved in the matter. Councilman Holloway expressed his agreement with Mr. Hrbek.

Vote: Yes – Sayre
No – Holloway, Hrbek, Lauder and Parker
Abstain – N/A
Absent – Conkey
(Mayor Tewalt did not vote as there was no tie to require his vote)
(MOTION FAILED)

COUNCIL AUTHORIZE TO ADVERTISE FOR PUBLIC HEARING – An Ordinance to Prohibit Solicitation in the Roadway

Vice Mayor Hrbek moved that Council instruct Staff to advertise for public hearing an Ordinance that would prohibit solicitation in the Town of Front Royal's Roadways.

Vice Mayor noted that a citizen had contacted him regarding the matter due to safety issues. He stated that there was a legitimate concern for the well-being of the solicitors and drivers in the community. He voiced support of holding the public hearing to obtain input.

Councilman Parker stated that he would support the motion as written, adding that he encouraged the citizens who held such fundraisers to attend the public hearing to express their recommendations.

Councilman Lauder noted that he agreed that there were safety concerns with the practice of individuals near and in the roadway and he would support the motion.

Councilman Holloway noted that one option would be to have a form available at the Town Hall with a responsible adult noting that they would be overseeing the event.

Councilman Sayre noted that he had not noticed individuals in the roadway. He stated that perhaps just bringing the matter to the attention of the public would solve the issue without putting an ordinance in place.

Vote: Yes – Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – Conkey
(Mayor Tewalt did not vote as there was no tie to require his vote)

CLOSED MEETING – Actual Litigation

Motion to Go Into Closed Session

Vice Mayor Hrbek moved that Council convene in a Closed Meeting to confer with the Town Attorney regarding actual litigation, specifically Applebee’s, et als v. Town of Front Royal, pursuant to Section 2.2-3711 (A)(7) of the Code of Virginia, 1950, as amended.

Vote: Yes – Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – Conkey
(Mayor Tewalt did not vote as there was no tie to require his vote)

Motion to Certify Closed Session

Vice Mayor Hrbek moved that Council certify that, to the best of each Council member’s knowledge as recognized by each Council member’s affirmative vote, that only public business matters as were identified in the motion by which the preceding closed session was convened; were heard, discussed or considered during the closed session of the Council; and, that the vote of each individual member be taken by roll call and recorded and included in the minutes of this meeting.

Vote: Yes – Holloway, Hrbek, Lauder, Parker, Sayre and Tewalt
No – N/A
Abstain – N/A
Absent – Conkey

(By Roll Call)

There being no further business, the Mayor declared the meeting adjourned at 8:43 p.m.

APPROVED:

Jennifer E. Berry
Clerk of Council