

6-11-91 Minutes

A regular meeting of the Council of the City of Bedford, Virginia, was held in the Council Hall of the Municipal Building at 7:30 p.m., June 11, 1991.

Members present: Mayor G. Michael Shelton; Councilman Larry D. Brookshier; Councilwoman Joanne A. Grahame; Vice Mayor John M. Owen, III; Councilman Ronnie C. Rice; and Councilman James A. Vest.

Members absent: Councilman Payton M. Otey.

Staff present: City Manager Jack A. Gross; City Attorney W. W. Berry, IV; and Clerk of the Council Teresa W. Hatcher.

Mayor Shelton opened the meeting and led all present in saying the Pledge of Allegiance to the Flag.

Mayor Shelton declared that the minutes of a regular Council meeting held on May 28, 1991, were approved as mailed.

Members of Council made various remarks during the Council comments portion of the agenda.

The Clerk of Council read aloud the following Public Hearing Notice:

#### NOTICE OF PUBLIC HEARING

Notice is hereby given that, pursuant to Section 22.1-29.1 of the Code of Virginia of 1950, as amended, the City Council of the City of Bedford will hold a public hearing at 7:30 p.m. on June 11, 1991, in the Council Hall of the Municipal Building, for the purpose of receiving the views of citizens on the appointment of members to the City School Board.

The Mayor stated that the following persons have requested consideration for appointment or reappointment to the two vacancies on the City School Board: Nancy L. Owen, Annie J. Lynton, Janice B. Martinez.

Mayor Shelton opened the public hearing at 7:40 p.m. As there were no comments, the Mayor closed the public hearing at 7:41 p.m.

Local Government Day Mayor Felicia Miller gave a report on the discussion of mandatory recycling held by the Local Government Day City Council. Ms. Miller stated that the Council voted in favor of curbside recycling.

Mayor Shelton stated that the recommendation of the Local Government Day City Council will be referred to the Solid Waste Committee.

The City Manager stated that Council had received a memorandum from the Director of Parks, Recreation & Cemeteries requesting that City Council grant permission to close Bedford Avenue Extension from the Health Department to the Primary School entrances on the following dates for various district and state ball tournaments. He stated that the Police and Fire Departments and the Lifesaving Crew will be notified of

these dates, and the general public will be informed by radio and newspaper messages:

July 5	3:00 p.m. - 9:00 p.m.
July 6	3:00 p.m. - 9:00 p.m.
July 7	3:00 p.m. - 9:00 p.m.
July 8	5:00 p.m. - 9:00 p.m.
July 9	5:00 p.m. - 9:00 p.m.
July 10	5:00 p.m. - 7:00 p.m.
July 19	5:00 p.m. - 9:00 p.m.
July 20	5:00 p.m. - 7:00 p.m.
July 21	5:00 p.m. - 7:00 p.m.
July 22	5:00 p.m. - 7:00 p.m.
July 23	5:00 p.m. - 7:00 p.m.
July 24	5:00 p.m. - 7:00 p.m.

Councilwoman Grahame moved that Council grant permission to close Bedford Avenue Extension from the Health Department to the Primary School during the times and dates listed in the memorandum dated June 5, 1991. The motion was seconded by Councilman Vest, was voted upon and carried.

City Manager Gross stated that Council had received a letter from the Executive Director of Bedford Main Street, Inc., requesting that certain streets in the Centertown area be closed during the Centerfest celebration in September. He stated that the Police and Fire Departments and the Lifesaving Crew will be notified of these closings, if approved, and written permission will be obtained from the adjoining property owners.

Councilman Vest moved that Council grant permission to close the following streets from 7:00 a.m. on Saturday, September 28, 1991, to 2:00 a.m. on Sunday, September 29, 1991, contingent upon Bedford Main Street, Inc.'s furnishing written permission of adjoining property owners to the City Manager's office:

South Bridge Street to Washington Street

North Bridge Street to Depot Street

East Main Street to South Street

West Main Street to Crenshaw Street

The motion was seconded by Councilman Brookshier, voted upon and carried.

The City Manager stated that Scott & Bond, Inc., who is sponsoring and organizing the Christmas Parade, is requesting that Council consider closing College Street and Ashland Avenue around the Recreation Field from 11:30 a.m. to 2:00 p.m. on December 7, 1991. In addition, if it is deemed necessary, they request that

Ashland Avenue in the vicinity of the Elks National Home be closed during those hours. Between 2:00 p.m. and 4:00 p.m., Scott & Bond is requesting the additional closing of streets along the parade route, as follows: Peaks Street, along North Bridge to West Main, along West Main Street to Fourth Street, and Bedford Avenue Extension to the County Recreation Field. Bedford Avenue and Mountain Avenue would be one-way streets during those hours and during the disbanding of the parade.

Mr. Gross stated that the parade route and street closings have been cleared with the Police Department, and Scott & Bond will notify the Fire Department and Rescue Squad. The residents of College Street and Ashland Avenue will be notified of these plans, and the residents will have ingress and egress to their homes. Ample notice of the street closings will also be given on the radio and in the newspaper.

Councilwoman Grahame moved that Council grant the request to close College Street and Ashland Avenue around the Recreation Field, and Ashland Avenue in the vicinity of the Elks National Home, if necessary, on December 7, 1991, from 11:30 a.m. to 2:00 p.m., and grant the request to close streets along the parade route from 2:00 p.m. to 4:00 p.m. on that date. The motion was seconded by Councilman Brookshier, voted upon and carried.

City Manager Gross stated that he has received several complaints from citizens concerning noise; approximately 56 complaints so far this year. Complaints concerned cars with excessively loud radios, boom boxes, and noise from nearby properties, including loud music, engine noises from working on a race car, etc. He stated that Councilman Owen had similar complaints and asked that the noise ordinance be reviewed to see if it could adequately solve these types of complaints. Mr. Gross said that upon reviewing the existing ordinance, the Chief of Police feels that it will be necessary to enact a new ordinance.

The City Manager explained the proposed new ordinance. Mr. Gross stated that the proposed ordinance has been posed in accordance with the provisions of Section 2-30 of the City Code; however, he said that Council had received a copy of the ordinance with a minor revision, where some exceptions and exemptions from the ordinance have been included. Mr. Gross stated that the City Attorney had reviewed these changes and feels that the changes are not substantial; therefore, the ordinance could be considered at this meeting.

On motion by Councilwoman Grahame, seconded by Vice Mayor Owen, voted upon and carried, Council waived the reading of the proposed ordinance, as it had been posted.

Councilwoman Grahame moved that the ordinance amending the City's existing noise ordinance by adding Section 14-77 be adopted. The motion was seconded by Vice Mayor Owen.

Discussion ensued with members of Council expressing their views on the adoption of this ordinance.

The Police Department will include on its monthly report to Council information regarding violations of the Noise Ordinance.

The motion was voted upon and carried by the following roll call vote:

Councilman Brookshier	aye
Councilwoman Grahame	aye
Councilman Otey	absent
Vice Mayor Owen	aye
Councilman Rice	aye

Councilman Vest                      aye

Mayor Shelton                              aye

The ordinance follows as adopted:

Section 14-77: Noise

(a) Definitions.

(1) Device means any mechanism which is intended to, or which actually produces noise when operated or handled.

(2) Emergency work means work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from immediate exposure to danger, including work performed by public service companies when emergency inspection, repair of facilities, or restoration of services is required for the immediate health, safety or welfare of the community.

(3) Motor vehicle means any vehicle which is self-propelled or designed for self-propulsion including, but not limited to, passenger cars, trucks, truck-trailers, semitrailers, campers, motorboats and racing vehicles; and any motorcycle (including but not limited to motor scooters and minibikes) as defined in the Code of Virginia, section 46.1-1(14).

(4) Noise means any sound which may cause or tend to cause an adverse psychological or physiological effect on human beings.

(5) Noise disturbance means any unnecessary sound which annoys, disturbs, or perturbs reasonable persons with normal sensitivities; or any unnecessary sound which reasonably may be perceived to injure or endanger the comfort, repose, health, peace or safety of any person.

(6) Person means any individual, corporation, cooperative, partnership, firm, association, trust, estate, private institution, group, agency, or any legal successors, representative, agent or agency thereof.

(7) Public right-of-way means any street, avenue, boulevard, highway, alley or public space which is owned or controlled by a public governmental entity.

(8) Residential area means any street or highway in the city where sixty (60) percent of the improved property is occupied by dwellings not used for business purposes.

(9) Sound means a temporal and spatial oscillation in pressure, or other physical quantity, in a medium with internal forces that causes compression and rarefaction of that medium, and which propagates at a finite speed to distant points.

(10) Sound pressure means the instantaneous difference between the actual pressure and the average

or barometric pressure at a given point in space.

(11) Stationary noise source means any equipment or facility, fixed or movable, that is capable of emitting sound beyond the property boundary of the property on which it is used.

(12) Zoning district classification refers to the scheme of land use classification.

(b) Penalties.

The provisions of this article shall be punishable by a fine not exceeding one thousand dollars (\$1000.00).

(c) Enforcement.

The provisions of this article shall be enforced by the Police Department, who may issue orders and regulations and prescribe measurement procedures for such enforcement.

(d) Emergency exception.

The provisions of this article shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency, nor to the emission of sound in the performance of emergency work.

(e) Declarations of findings and policy.

It is hereby declared to be the public policy of the city to promote an environment for its citizens that is free from noise which jeopardizes their health or welfare or which degrades the quality of life.

(f) Nuisance noise.

It shall be unlawful for any person to make, continue to make, or cause to be made or continued, a noise disturbance within the city.

(g) Specific prohibitions.

The following acts are declared to be noise disturbances in violation of this article, provided that the acts so specified shall not be deemed to be an exclusive enumeration of those acts which may constitute a noise disturbance under paragraph f and provided that the acts so specified below may still constitute a noise disturbance under paragraph f independently of the hours of day the acts take place.

(1) Operating or permitting the use of operation of any radio receiving set, musical instrument, television, phonograph, or any other device for the production of sound between the hours of 9:00pm and 7:00am the following day in such a manner as to be plainly audible across property boundaries or through partitions common to two (2) residences within a building or plainly audible at fifty (50) feet from such device when operated within a motor vehicle parked on a public right of way or in a public place.

(2) The operation of any equipment or other noise making device between the hours of 9:00pm and 7:00am the following day in such a manner as to be plainly audible across property boundaries or through

partitions common to two (2) residences within a building.

(3) Owning, keeping, possessing or harboring any animal which frequently or habitually howls, barks, meows, squawks, or makes such other noise that is plainly audible across property boundaries or through partitions common to two (2) residences within a building; however, farm animals other than dogs shall be excluded.

(4) Yelling, shouting, hooting, whistling or singing on the public street between the hours of 9:00pm and 7:00am.

(h) Quiet zone.

(1) It shall be unlawful for any person to create any noise in excess of that prescribed within any area designated as a "quiet zone" in conformance with the provisions of subsection (2) below provided that conspicuous signs are displayed in adjacent or contiguous streets indicating that the area is a quiet zone.

(2) Whenever the protection of the public health, safety and welfare so require, after a duly advertised public hearing, the city council may designate any geographical area of the city as a "quiet zone." Such designation shall include a description of the subject area, the reasons for its designation as a quiet zone and shall prescribe the level of noise which shall be permitted in such a quiet zone.

(i) Prohibited noise.

(1) No vehicle shall be loaded with materials likely to create prohibited noises by striking together without using every reasonable effort to deaden the noise.

(2) It shall be unlawful for any person in operating a motor vehicle within the city on public or private property to create in the operation thereof any prohibited noise. In operating such vehicle the following acts are in violation of this section, but such enumeration shall not be deemed to be exclusive:

(aa) The use of a vehicle so out of repair as to cause thereby grating, grinding, rattling or any of such noises or any other prohibited noise;

(bb) The practice of unnecessarily racing the motor of a vehicle while standing or moving, thereby causing prohibited noise from such motor;

(cc) The practice of unnecessarily retarding the spark to the motor of a vehicle and thereby causing prohibited noise from the motor;

(dd) In starting a vehicle from a standing position, the practice of gaining speed unnecessarily quickly and thereby causing prohibited noise from the motor and the screeching of tires or either of such noises;

(ee) The practice of coming to an unreasonably quick stop with a vehicle and thereby causing unnecessary grinding of brakes and screeching of tires or either of such noises;

(ff) The operating of vehicles off road creating unnecessary noise plainly audible across property boundaries in such a manner that the police department receives a complaint regarding the operation.

(hh) The sounding of any horn or signaling device on any motor vehicle, except as a danger warning.

(ii) Operating or permitting the use or operation of any radio receiving set or any other device for the

production of sound in motor vehicles within the city in such a manner as to be plainly audible fifty (50) feet from such motor vehicle.

(jj) The operation of a vehicle in which the noise produced by the exhaust system is louder than that produced by the standard factory exhaust system for that particular vehicle.

(j) Sound-amplifying equipment

(aa) Except pursuant to a permit issued by the city manager, the use in, on or attached to any motor vehicle operating on any highway of the city, of any radio, phonograph, musical instrument, bell, whistle, loudspeaker, amplifier or device of any kind whatsoever whereby sound is cast on any highway or street to promote or advertise the sale of goods, wares, or merchandise or for the purpose of advertising auction sales, sporting events or other businesses or things advertised thereby is prohibited. The use of a loudspeaker on a motor vehicle for making auction sales on streets or highways directly in front of the property then being sold and entirely outside of the business districts of the city shall not be construed as a violation of this paragraph when such use is limited strictly to the selling at auction of such property.

(bb) Except pursuant to a permit issued by the city manager, the use of any radio, phonograph, musical instrument, bell, whistle, loudspeaker, amplifier or device of any kind whatsoever whereby sound is cast on any highway, street, or across property boundaries is prohibited. The use of a loudspeaker for making auction sales on the property being sold shall not be construed as a violation of this paragraph when such use is limited strictly to the selling at auction of such property.

(cc) Any permit issued by the city manager for the use of any sound amplifying equipment shall be subject to the following regulations:

(1) The only sound permitted is music and human speech.

(2) May only operate during the hours specified by the city manager.

(3) Human speech and music amplified shall not be lewd, indecent, slanderous or inciting to riot or other unlawful conduct.

(4) Must operate within any other restrictions as noted on the permit by the city manager.

(dd) There shall be a \$25.00 fee for the application of a sound amplifying permit.

(k) The following specific activities are exempt from the provisions of this ordinance:

(aa) The use of intercoms or paging systems by businesses located in commercial areas shall not be construed as a violation of this paragraph providing that the sound systems are used for paging purposes only.

(bb) Sound amplifying equipment used at public parks or recreation fields are exempt from the provisions of this section providing the operation has been approved by the park or field management.

(cc) Clock chimes, bells and music played for a call to worship between the hours of 9:00 a.m. and 9:00 p.m.

(dd) Motor vehicles driven in wedding processions are exempted from the provisions of Section (i), Paragraph (1) only.

(ee) Motor vehicles driven in duly authorized parades are exempted from the provisions of Section (j) only.

Councilwoman Grahame moved that Council adjourn into executive session to interview applicants for appointment to the City School Board, pursuant to Section 2.1-344(a)(1) of the Code of Virginia of 1950, as amended. The motion was seconded by Councilman Brookshier, voted upon and carried by the following roll call vote:

Councilwoman Grahame	aye
Councilman Otey	absent
Vice Mayor Owen	aye
Councilman Rice	aye
Councilman Vest	aye
Councilman Brookshier	aye
Mayor Shelton	aye

Council adjourned into executive session at 8:30 p.m. Non-council members attending were: Applicants to the City School Board Nancy L. Owen, Janice Martinez; and William S. Ludwig who is seeking appointment as the City School Board's representative to the County School Board.

Vice Mayor Owen left the executive session during the time that Nancy L. Owen was being interviewed.

Council reconvened into open session at 10:12 p.m.

The Clerk of Council read aloud the following proposed resolution:

BE IT RESOLVED that the Council of the City of Bedford hereby certifies that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, and (2) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Council.

Councilwoman Grahame moved that the resolution be adopted as read. The motion was seconded by

Councilman Vest, voted upon and carried by the following roll call vote:

Vice Mayor Owen	aye
Councilman Rice	aye
Councilman Vest	aye
Councilman Brookshier	aye
Councilwoman Grahame	aye
Councilman Otey	absent
Mayor Shelton	aye

Mayor Shelton adjourned the meeting at 10:13 p.m.