

4-13-93 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., April 13, 1993.

Members present: Mayor G. Michael Shelton; Councilman Larry D. Brookshier; Councilwoman Joanne A. Grahame; Councilman Payton M. Otey; Councilman Ronnie C. Rice; Councilman W. D. Tharp; and Vice Mayor James A. Vest.

Members absent: None.

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 March 23, 1993, were approved as mailed.

Councilman Tharp reported on the funding raising for the Bedford Public Library capital campaign fund. Mr. Tharp stated that \$414,038 has been raised in cash and pledges as of April 13, 1993.

Mayor Shelton stated that "Dare Day" will be held at Liberty Lake Park on April 22.

Mayor Shelton presented certificates of retirement, Jefferson cups, and lapel pins to Mr. Charles Carter, Water Department with 34 years of service; and Mr. Allen Parker, Public Works Department with 32 years of service.

The Consent Agenda consisted of the following items: Appointment of Jack Gross, City Manager, to serve as the staff member of the Rural Transportation Technical Committee, with Wayne Hale as alternate. Appointment of Mayor Shelton to serve on the Rural Transportation Policy Committee, with the City Manager as his alternate.

Councilman Brookshier moved that the Consent Agenda be approved. The motion was seconded by Councilman Otey, voted upon and carried unanimously.

City Manager Gross stated that Council had received a recommendation from the City's consulting engineers, Thompson & Litton, Inc., that the City accept the low bid of Laughon & Johnson, Inc., in the amount of \$518,292, for the first phase of the landfill project. Mr. Gross indicated that copies of the bid tabulations were sent to Hunton & Williams and to the Virginia Resources Authority (VRA) and the VRA has no adverse comments; and Mary Jo White at Hunton & Williams has no adverse comments.

On motion by Vice Mayor Vest, seconded by Councilman Tharp, voted upon and carried unanimously by the following roll call vote, Council approved the awarding of the contract in the amount of \$518,292 for Phase I of the landfill to Laughon & Johnson, Inc., and authorized the City Manager to sign the Notice of Award:

Councilman Brookshier      aye

Councilwoman Grahame      aye

Councilman Otey	aye
Councilman Rice	aye
Councilman Tharp	aye
Vice Mayor Vest	aye
Mayor Shelton	aye

The City Manager stated that Council had received copies of a proposed ordinance requested by the Chief of Police which would amend Sections 15-5 and 15-7 of the City Code. Mr. Gross indicated that these amendments will provide the Chief needed flexibility in the chain of command when officers are not available.

On motion by Councilwoman Grahame, seconded by Councilman Otey, voted upon and carried unanimously, Council waived the reading of the proposed ordinance as it had been properly posted.

On motion by Councilwoman Grahame, seconded by Vice Mayor Vest, voted upon and carried unanimously by the following roll call vote, Council adopted the ordinance amending Sections 15-5 and 15-7 of the City Code:

Councilwoman Grahame	aye
Councilman Otey	aye
Councilman Rice	aye
Councilman Tharp	aye
Vice Mayor Vest	aye
Councilman Brookshier	aye
Mayor Shelton	aye

The ordinance follows as adopted:

**ORDINANCE TO AMEND AND REENACT  
SECTION 15-5 AND 15-7 OF THE CITY CODE**

ORDINANCE NO. 93-02

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEDFORD, VIRGINIA:

Section 1.

Section 15-5 of the City Code is amended and reenacted to read as follows:

Sec. 15.5 Obedience to orders; chain of command.

Each member of the police department shall be obedient to the orders of his superiors in the chain of command.

The chief of police may designate a temporary replacement for any member of the police department absent from work. In the absence of the chief of police, the next ranking member of the department shall assume command unless otherwise designated by the chief of police or city manager.

If, during an emergency, the ranking member of the police department commanding the scene becomes injured or ill and unable to perform, the next ranking member of the police department with seniority shall assume command until relieved by a member of higher rank or equal rank with seniority.

Section 2.

Section 15-7 of the City Code is amended and reenacted to read as follows:

Sec. 15-7 Rules and regulations.

The chief of police shall prepare rules and regulations for the police department not inconsistent with state law, the city Charter, the city ordinances or other city policies. Such rules and regulations shall be approved by the city manager.

Section 3.

This ordinance shall become effective immediately upon passage.

The City Manager stated that Council had received copies of a proposed ordinance which would amend Section 14-77(f)(1) of the City Code, as part of the Noise Ordinance. The amendment would strike the last half of the sentence in subsection (g)(1), as follows: "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." The Chief of Police has requested this change in the Noise Ordinance in order to respond to a suggestion from the Court.

On motion by Councilman Brookshier, seconded by Councilwoman Grahame, voted upon and carried unanimously, Council waived the reading of the ordinance as it had been properly posted.

On motion by Councilman Brookshier, seconded by Councilman Rice, voted upon and carried unanimously by the following roll call vote, Council adopted the ordinance amending Section 14-77(g)(1) of the City Code:

Councilman Otey	aye
Councilman Rice	aye
Councilman Tharp	aye
Vice Mayor Vest	aye
Councilman Brookshier	aye
Councilwoman Grahame	aye
Mayor Shelton	aye

The ordinance follows as adopted:

**ORDINANCE TO AMEND AND REENACT SECTION 14-77(G)(1)  
OF THE CITY CODE**

ORDINANCE NO. 93-03

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEDFORD, VIRGINIA:

Section 1.

Section 14-77(g)(1) of the City Code is amended and reenacted to read as follows:

Sec. 14-77 Noise

(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 9:00 p.m. and 7:00 a.m. 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.

Section 2.

This ordinance shall become effective immediately upon passage.

City Manager Gross stated that Bedford Main Street, Inc., has requested that Council consider changing the ordinance regarding street closures to require approval from a specific percentage of affected businesses, rather than 100 percent, to close streets for special events. Mr. Gross indicated that Council has received copies of a proposed ordinance prepared by the City Attorney which would amend Section 20-9 of the City Code to allow for a permit to be issued for temporary closings of streets when approval of 90 percent of adjacent property owners is obtained and liability and property insurance is obtained.

On motion by Councilman Rice, seconded by Councilman Otey, voted upon and carried unanimously, Council waived the reading of the proposed ordinance regarding street closures as it had properly been posted.

On motion by Councilman Rice, seconded by Councilman Tharp, voted upon and carried unanimously, after a brief discussion, Council adopted the ordinance regarding street closures. Roll call vote follows:

Councilman Rice	aye
Councilman Tharp	aye
Vice Mayor Vest	aye
Councilman Brookshier	aye
Councilwoman Grahame	aye
Councilman Otey	aye
Mayor Shelton	aye

The ordinance follows as adopted:

**AN ORDINANCE PROHIBITING THE OBSTRUCTION OF FREE PASSAGE  
ON PUBLIC STREETS AND OTHER PLACES AND PROVIDING FOR  
TEMPORARY CLOSING OF STREETS AND FOR PERMITS FOR  
TEMPORARY USE OF STREETS BY OTHERS**

Ordinance No. 93-04

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEDFORD AS  
FOLLOWS:

**Section 1.** Section 20-9 of the Code of the City of Bedford (1974) is repealed and a new Section 20-9 is enacted as follows:

Section 20-9 Illegal obstruction of free passage in public places, temporary closing of streets, and permits for temporary use of streets by others.

(a) Any person who in any public place or on any private property open to the public unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such place or property and who shall fail or refuse to cease such obstruction or shall fail or refuse to move on when requested to do so by the owner or lessee or agent or employee of such owner or lessee or by a duly authorized law enforcement officer shall be guilty of a class one misdemeanor. Nothing in this Section shall be construed to prohibit lawful picketing or any use of a street, alley, or other public place pursuant to Paragraph B or Paragraph C of this Section.

(b) The City may close streets and alleys temporarily for public purposes or where such closing is deemed necessary for public safety.

(c) Any person, firm, association, organization or corporation desiring to use a City street, alley, sidewalk, parking lot or other publicly owned property for other than public purposes and requesting that such property be blocked and temporarily closed for public use and travel, may apply in writing to the City Council for a permit for such use. The City Council may issue a permit allowing such applicant to block the specified street, sidewalk, parking lot or other public property and allowing the applicant the temporary use of such places for other than public purposes. Such permit shall not be issued unless (i) consent in writing to such obstruction or blocking of the street, sidewalk, parking lot, or public place is given in writing by the owners or lessees of 90% of the real estate lots or parcels abutting the property to be blocked or closed;

(ii) The applicant so permitted to use the street or public place furnishes a public liability and property insurance contract insuring the liability of such person, firm, association, organization or corporation for personal injury or death and damages to property resulting from such temporary use in such amounts as shall be designated by the City Council in the permit, in which contract the City shall be named as an additional insured; and (iii) When any

street closed is an extension of the state highway system, adequate provision shall be made to detour through traffic; and (iv) no advertising of any business other than vendors involved in the use or event shall be displayed in or on the street in connection with such use.

**Section 2.**

Pursuant to Section 19 of the City Charter, the City Clerk prior to the effective date hereof shall cause a copy of the Ordinance to be published in the Bedford Bulletin for one week or to be posted at three or more places in the City for one week, and this Ordinance shall be effective upon such posting or publication.

City Manager Gross stated the Commissioner of the Revenue has reported that Section 22-69 of the City Code as passed contains language that was included by error and that the ordinance should be amended in order to give the Commissioner of the Revenue authority to make statutory assessments. The City Manager indicated that the ordinance had been properly posted. City Manager Gross corrected a typographical error in the proposed ordinance which did not impact the substance of the ordinance.

On motion by Councilwoman Grahame, seconded by Councilman Brookshier, voted upon and carried unanimously, Council waived the reading of the proposed ordinance providing for assessments by the Commissioner of the Revenue for failure to report food and beverage tax.

Councilman Tharp moved that Council adopt the ordinance amending Section 22-69 of the City Code to provide for assessment by the Commissioner of the Revenue for failure to report food and beverage tax. The motion was seconded by Vice Mayor Vest, voted upon and carried unanimously by the following roll call vote:

Councilman Tharp	aye
Vice Mayor Vest	aye
Councilman Brookshier	aye
Councilwoman Grahame	aye
Councilman Otey	aye
Councilman Rice	aye
Mayor Shelton	aye

The ordinance follows as adopted:

**AN ORDINANCE PROVIDING FOR ASSESSMENTS BY THE  
COMMISSIONER OF THE REVENUE FOR FAILURE TO  
REPORT FOOD AND BEVERAGE TAX**

WHEREAS, the City Council enacted an Ordinance on November 24, 1992, imposing a tax upon foods and beverages sold within the City of Bedford; and

WHEREAS, the Commissioner of the Revenue has reported that Section 22-69 of the Ordinance as passed dealing with assessments by the Commissioner for failure to report tax properly contained language that was included by error and that the Ordinance should be amended in order to give the Commissioner of the Revenue authority to make statutory assessments.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEDFORD AS FOLLOWS:

**Section 1.** Section 22-69 of the Ordinance enacted on November 24, 1992, is amended and re-enacted as follows:

**Section 22-69. Assessments by Commissioner for Failure to Report Tax Properly.**

A. If any seller fails to make a report, or makes a grossly inaccurate report, or a report that is false or fraudulent, the Commissioner shall make an estimate for the taxable period of the revenue of the seller subject to the tax imposed hereby and shall assess the tax plus penalties and interest.

B. In such case, the Commissioner shall give the seller ten (10) days notice to appear before the Commissioner or the designee of the Commissioner, with such books, records and papers as the Commissioner may require relating to the seller's business for the taxable period in question. The Commissioner may require that such seller or its agent and employees give testimony or answer interrogatories under oath administered by the Commissioner or his designated agent respecting the services provided and the revenues therefrom which are or may be subject to the tax imposed hereby, or the failure to make a report thereof as herein provided.

C. If any seller fails to make any such report, or refuses to permit an examination of its records, books or papers, or to appear and answer questions within the scope of such an investigation relating to revenues subject to the tax herein imposed, the Commissioner is authorized to make the necessary assessment based upon such information as may be available, and he shall notify such person by registered mail sent to his last known place of address of the amount of such tax, interest and penalty, and the total thereof shall be payable within ten (10) days from the date of mailing of such notice. The assessment so made shall be deemed prima facie correct.

**Section 2.** An emergency exists and this Ordinance shall take effect immediately upon passage.

City Manager Gross stated that Council had received copies of a resolution which needs to be acted upon by City Council and a copy of certain assurances which must be given to the Federal Emergency Management Agency (FEMA) in order to receive partial reimbursement for the City's clean-up expenses incurred during the recent snowstorm. Mr. Gross indicated that FEMA required that the City's application be submitted by April 15. The City Manager reported that at this point the City is only eligible for labor and equipment operations for the snow removal; however, additional funds may be available at a later date for expenses

incurred by the Electric Department and for supplies such as salt and sand. The preliminary estimate for the City's expenses, using these forms, is somewhere between \$7,000 and \$10,000.

The Clerk of Council read aloud the following proposed resolution:

## **RESOLUTION**

**WHEREAS**, the City of Bedford, along with the surrounding area, recently experienced extreme weather conditions involving a winter snowstorm; and

**WHEREAS**, the Governor of the Commonwealth of Virginia declared an emergency relating to this weather event; and

**WHEREAS**, the Federal Emergency Management Agency (FEMA) is allowing partial reimbursement for certain snow removal activities which occurred during the period between March 13 and March 17, 1993;

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the City of Bedford appoints City Manager Jack A. Gross or Chief of Police Milton H. Graham as the Governor's authorized representatives, and hereby authorizes them to execute and apply for these funds for and on behalf of the City of Bedford, a public entity established under the laws of the State of Virginia. This application shall be filed with the appropriate State office for the purpose of obtaining certain Federal financial assistance under the Disaster Relief Act (Public Law 288, 93rd Congress) or otherwise available from the President's Disaster Relief Fund; and

**BE IT FURTHER RESOLVED** that the City of Bedford, a public entity established under the laws of the State of Virginia, hereby authorizes its agent to provide to the State and to the Federal Emergency Management Agency (FEMA) for all matters pertaining to such Federal disaster assistance the assurances and agreements printed on the reverse side of the Designation of Applicant's Agent form.

Councilwoman Grahame moved that the resolution be adopted as read. The motion was seconded by Councilman Otey, voted upon and carried unanimously by the following roll call vote:

Vice Mayor Vest	aye
Councilman Brookshier	aye
Councilwoman Grahame	aye

Councilman Otey	aye
Councilman Rice	aye
Councilman Tharp	aye
Mayor Shelton	aye

The City Manager stated that during its presentation to City Council at the March 23 meeting, the Bedford Area Chamber of Commerce requested an appropriation of \$2,160 for tourism accreditation from the 1992-93 unappropriated contingency fund, as well as \$6,647.50 from the 1993-94 budget. Mr. Gross stated that the additional monies are required to complete the tourism accreditation process.

Vice Mayor Vest moved that Council appropriate \$2,160 from the unappropriated contingency to the Bedford Area Chamber of Commerce for tourism accreditation. The motion was seconded by Councilman Rice, and after a brief discussion, was voted upon and carried unanimously by the following roll call vote:

Councilman Brookshier	aye
Councilwoman Grahame	aye
Councilman Otey	aye
Councilman Rice	aye
Councilman Tharp	aye
Vice Mayor Vest	aye
Mayor Shelton	aye

Council held a budget work session on the proposed capital improvement projects totaling \$748,380. Department heads reviewed their requests with Council.

Mayor Shelton adjourned the meeting at 9:39 p.m.