

11-23-93 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., November 23, 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 welcomed members of Boy Scout Troop 183.

Mayor Shelton declared that the minutes of a regular Council meeting held on November 9, 1993, were approved as mailed.

City Manager Gross stated that the Christmas decorations will be turned on at 5:00 p.m. on November 26.

The City Manager stated that an official of the Department of Transportation notified him that the south end of the North/South Connector Road will probably be opened the week of November 29, after a final inspection. Mr. Gross stated that the north section of the road will not be opened until the latter part of December. City Manager Gross indicated that the ribbon cutting ceremony is now scheduled for December 22 and Governor Wilder has been invited to attend.

Mr. Gross stated that if Council is interested, he will contact the Governor's office to invite Governor Wilder to the groundbreaking ceremony for the new library. Council concurred.

Council concurred in changing the agenda as follows: move the first item under "New Business" to the last item under "New Business"; and item 5 was changed to read "Adoption and First Reading of Resolution Authorizing City of Bedford to Commence Regulating Cable Television Rates".

On motion by Councilman Rice, seconded by Councilman Otey, voted upon carried unanimously, Council appointed Mr. T. Glynn Bradley and Mr. G. E. Murray, Jr., to serve four-year terms on the Industrial Development Authority, said terms to expire November 30, 1997.

On motion by Councilman Brookshier, seconded by Councilwoman Grahame, voted upon and carried unanimously, Brian D. Buchanan, M.D., was appointed to the Recreation Commission for a three-year term, said term to expire June 30, 1996, on the recommendation of the Recreation Advisory Commission.

The City Manager is to advise Council of any vacancies that currently exist on boards and commissions.

The City Manager stated that the 1992 Cable Act allows local government franchising authorities to regulate basic tier services and, if necessary, to order refunds by a franchised cable television operator. The basic tier services include local channels as well as public educational and governmental access channels.

Mr. Gross stated that Allen & Harold, P.L.C., has prepared an ordinance which would amend the City Code by adopting rules and regulations consistent with the requirements established by the Federal Communications Commission and by federal statute for the City to begin regulating rates. The ordinance includes the procedural steps to be taken to provide opportunity for consideration of the views of interested parties. Adoption of the ordinance is a prerequisite to giving notice to the cable television operator that the City intends to exercise its rate regulating authority.

The City Manager indicated that a first reading of the ordinance will be held this evening and the ordinance will then be posted in accordance with Section 2-30 of the City Code and considered for adoption at the December 14 meeting. This will allow full opportunity for community comments, since the public hearing on franchise renewal, which was opened on February 9, 1993, is still open.

The Clerk of Council and City Attorney read aloud the following proposed ordinance:

**AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF
BEDFORD, VIRGINIA, BY ADOPTING RULES AND REGULATIONS
CONSISTENT WITH THE REQUIREMENTS ESTABLISHED BY THE
FEDERAL COMMUNICATIONS COMMISSION AND BY FEDERAL
STATUTE AS A PREREQUISITE FOR A CABLE TELEVISION
FRANCHISING AUTHORITY TO COMMENCE REGULATING
RATES CHARGED BY A FRANCHISED CABLE TELEVISION
OPERATOR AND, IF NECESSARY, TO ORDER REFUNDS
BY SUCH FRANCHISED CABLE TELEVISION OPERATOR**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEDFORD,
VIRGINIA,** that the City Code shall be and hereby is amended by the addition of a new Chapter entitled "Cable Television Rate Regulation" as follows:

Cable Television Rate Regulation

Section 1. Intent

The City of Bedford finds that it is in the best interests of the City's residents to establish rules and regulations whereby the City will be entitled, pursuant to relevant Federal statute and consistent with the rules promulgated by the Federal Communications Commission, to exercise to the maximum extent legally permissible regulatory authority and control over the rates charged by any franchised cable television operator for cable television services and related or accompanying equipment, services and facilities provided within the City of Bedford. The complex procedural requirements established by relevant Federal Statute and by the Federal Communications Commission currently permit the City of Bedford in its capacity as Franchising Authority to exercise regulatory authority and control only over rates charged by a franchised cable television operator for basic cable television service and related

or accompanying equipment, services and facilities, as such basic cable television service is defined by Federal statute, to-wit, Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Sections 521-559. The rules and regulations adopted by the Federal Communications Commission pursuant to Title VI of the Communications Act of 1934, as amended, require, as one prerequisite to the City's commencement of regulating rates charged by a cable television operator and, if necessary, ordering refunds, that the City adopt regulations consistent with the regulations of the Federal Communications Commission and, if such rules are not already in place, promulgate rules providing a reasonable opportunity for consideration of the views of interested parties. It is the intent of this Ordinance to satisfy the above-stated requirements established by the Federal Communications Commission and to establish the City's intent and authority to commence regulating rates charged by any cable television operator franchised by the City and, if necessary, to allow the City to order refunds by such cable television operator.

Section 2. Short Title.

This ordinance shall be known and may be cited as the "Cable Television Rate Regulation Ordinance."

Section 3. Definitions.

For the purposes of this Ordinance, all terms of art, whether capitalized or not, shall have the meaning ascribed to them in Title VI of the Communications Act of 1934, as amended. In addition, "City" shall mean the City of Bedford, Virginia.

Section 4. Adoption of Rules; Assumption of Authority.

The City hereby adopts and shall follow all cable television rate regulations promulgated by the Federal Communications Commission in effect as of the date of this Ordinance and as they may be amended or modified thereafter. The City further adopts for and assumes unto itself all authority, rights and prerogatives granted to franchising authorities pursuant to such Federal Communications Commission regulations and shall be and hereby is authorized to regulate cable television rates to the maximum extent legally permissible under Title VI of the Communications Act of 1934, as amended, and in accordance with Federal Communications Commission regulations.

Section 5. Opportunity for Consideration of Views

of Interested Parties.

Before the issuance of any final determination by the City concerning any initial rates submitted by a cable operator (that is, those rates in effect as of the date regulatory authority is

exercised by the City) or concerning any rate increases proposed by a cable operator, the City shall convene a public meeting at which the views of any interested parties, including subscribers and representatives of the affected cable television operator, can and shall be heard by the City's representatives concerning the rates submitted or proposed by the cable operator and any matters relevant to such rates. Said public meeting shall be held only after the City has given notice to the affected cable operator in writing at least five work days in advance of such meeting of the time, place and general purpose of such meeting. Such notice also shall be published once a week for two successive weeks in some newspaper published or having general circulation within the City of Bedford. The term two successive weeks as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication, and the hearing may be conducted not less than six days nor more than twenty-one days after the second notice shall appear in such paper. Any such meeting may be continued from time to time without further notice other than the announcement, at the time of adjournment, of the time and place of the continued meeting. In addition to, and not in lieu of the foregoing stated process, the City may, upon such notice and in accordance with such procedures as it deems appropriate, receive and consider written comments expressing the views of interested parties.

Section 6. Proprietary Information.

Any cable operator may be required by the City, pursuant to Federal Communications Commission rules and regulations, to submit to the City such information, including proprietary information concerning cable programming costs or other types of financial information, as may be necessary for the City to make a rate determination in those cases where a cable operator's initial rates or proposed rate increases exceed the presumptively reasonable level established by the Federal Communications Commission. In the event any cable operator submits to the City information or material that such operator deems proprietary or confidential, it may submit therewith a request that such information or material not be made routinely available for public inspection, and shall make a written showing, by a preponderance of the evidence, that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. Section 552. Such request and showing (or copies thereof) shall be attached to and shall cover all of the materials to which it applies and all copies of those materials. To the maximum extent feasible, the materials to which the request and showing applies shall be separated from any materials to which the request and showing does not apply; if such separation is not feasible, the portion of the materials to which the request and showing applies shall be identified. If the City denies the request for confidentiality, it shall so notify the cable operator in writing of such denial, but shall not in any event release for public inspection such material to which the request relates until more than five working days after notice of such denial has been received by the cable operator. If the cable operator chooses to seek review of the City's denial of the request for confidential treatment, such review shall be sought from the Federal Communications Commission within five working days after the operator's receipt of the denial, and the City's release of such material for public inspection shall be stayed pending review. Notwithstanding any request for confidential treatment of any material or information submitted by a cable operator, and notwithstanding the City's grant or denial of such request, or the pendency of the review of any denial, nothing shall prevent the City from using such information or material for the purposes for which it was requested or submitted, or from disclosing and releasing such information or material, or copies thereof, to the City's officials, employees, representatives or agents under such conditions of confidentiality or limitations on disclosure as then apply to the City. If no request for confidentiality is submitted, the City shall have no obligation to consider the need for non-disclosure.

Section 7. Notice.

Any written notice required pursuant to this Ordinance shall be deemed as received three working days after the deposit of same, properly addressed, in any U.S. mail box, with first class postage affixed thereon. Notwithstanding the immediately foregoing provision, actual receipt of such notice by the intended recipient shall constitute proper notice for all purposes of this Ordinance.

Section 8. Delegation of Authority.

With the exception of the disapproval of rates, approval of rates over the objection of interested parties, ordering of prospective rate reductions, imposition of rate prescriptions, and ordering of refunds to subscribers, the City Manager shall be and hereby is vested with all authority necessary to take all actions and to exercise all rights and prerogatives for and on behalf of the City as set forth herein or in the rules and regulations of the Federal Communications Commission. With respect to any authority not so delegated herein, such authority shall be exercised only by the City Council sitting pursuant to a duly convened meeting.

The Clerk of Council read aloud the following proposed resolution:

RESOLUTION AUTHORIZING THE CITY OF BEDFORD

TO COMMENCE REGULATING CABLE TELEVISION RATES

WHEREAS, the City of Bedford, Virginia, finds that the interests of its residents will be furthered by the City's exercise of regulatory authority and control over the rates charged within the City for cable television service and related equipment, thereby assuring that the City's residents will, to the maximum extent legally permissible, enjoy the protections afforded by the Cable Television Consumer Protection and Competition Act of 1992 and related Federal regulations.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bedford, Virginia:

1. That the City shall be and hereby is authorized, pursuant to relevant Federal statutes and consistent with the rules promulgated by the Federal Communications Commission, to exercise to the maximum extent legally permissible regulatory authority and control over the rates charged by any franchised cable television operator for cable television services and related or accompanying equipment, services and facilities provided within the City of Bedford.

2. That the City Manager or, in the event of his non-availability, the Assistant City Manager, shall be and hereby is authorized and directed, on behalf of the City of Bedford, to take all steps necessary or appropriate under relevant Federal Communications Commission rules and regulations to cause the City to become lawfully entitled to assert regulatory authority and control over cable television rates charged within the City of Bedford, as set forth in the immediately preceding paragraph, and shall, without otherwise limiting the authority granted hereby, be specifically authorized to execute on behalf of the City any and all documents, forms and correspondence necessary or appropriate to further the City's intent to exercise such regulatory authority and control.

3. That the City Manager or, in the event of his non-availability, the Assistant City Manager, shall be and hereby is granted the discretion and authority to file on behalf of the City such complaint form or forms with the Federal Communications Commission as are appropriate or necessary to cause the Federal Communications Commission to assert regulatory authority and control over the rates charged within the City for cable television programming services and related equipment, as such are defined by relevant Federal statutes or regulations.

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

City Manager Gross reported that real estate taxes on a parcel of land located at 817 Oak Street in the City of Bedford assessed in the name of Serena Welch Waters have been delinquent for in excess of three years. The property is unoccupied, and the owner of the property no longer lives in the community and apparently has abandoned the property. The City by statute is authorized to petition the Circuit Court for sale of the real estate in order to satisfy the City's tax lien.

Mr. Gross stated that City Attorney Berry reports that the property is subject to numerous judgment liens, including very large liens arising from nursing home judgments. The attorney for the out-of-town nursing home has not been willing to proceed, and sale of the property by the City appears to be the only way to get good title to interested purchasers and to pay off the City taxes. The City Manager indicated that a resolution has been prepared that would employ Mr. Berry as special counsel for the purposes of this suit, which is necessary in order to assure that the attorney's fees will be included in the costs of the case to be reimbursed from the proceeds of sale.

The Clerk of Council read aloud the following proposed resolution:

**A RESOLUTION EMPLOYING COUNSEL FOR THE PURPOSE
OF INSTITUTING PROCEEDINGS FOR THE SALE OF
DELINQUENT TAX LANDS LOCATED ON
OAK STREET IN THE CITY OF BEDFORD**

BE IT RESOLVED by the City Council of the City of Bedford:

Section 1. The City Council hereby employs William W. Berry, IV, of the Law Firm of BERRY & CLARKE to institute proceedings under Article 4, Chapter 39 of Title 58.1 of the Code of Virginia, 1950, as amended, for the sale of a parcel of land located on Oak Street in the City of Bedford, designated as Tax Parcel 195-1-A, for which real estate taxes are assessed in the name of Serena Welch Waters and in respect to which the payment of City real estate taxes have been delinquent for in excess of three years from the date such taxes became due, and directing said attorney to file such proceedings forthwith.

Section 2. No bond pursuant to Section 58.1-3966 shall be required by the City Council.

Section 3. The said special counsel shall be compensated for such services at the rate of \$75.00 per hour, and in addition to such compensation he shall be entitled to reimbursement of actual costs expended necessary for such proceedings, which shall include photocopies, postage, toll calls, and monies advanced on behalf of the City including monies paid to the Clerks of Court for filing of pleadings and papers, to Sheriffs for service of process and related costs, to real estate appraisers and others for expert witness fees, to court reporters for transcripts of testimony, and to government officials for recording deeds and documents.

Section 4. Compensation and reimbursement of expenses shall be made by the City Treasurer upon monthly statements rendered by the said special counsel, and he is directed in the course of said proceedings to seek from the Court on behalf of the City pursuant to Section 58.1-3969 reimbursement of such sums as part of the Court costs to be paid into the Treasury of the City.

Section 5. This resolution shall take effect immediately upon passage.

Councilman Brookshier 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:

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

The City Manager stated that the Solid Waste Committee met on November 18 and discussed various options for refuse collection and recycling. Mr. Gross stated that the Committee considered the following:

1. To collect recyclables every other week; collect refuse twice per week during the daylight

savings time, then once per week the rest of the year.

2. Put out a Request for Proposals (RFP) for privatization of refuse collection, on both a once-per-week and a twice-per-week basis, and recycling collection.

3. Change brush pickup to every other month or to twice per year and consider making a charge for this service.

City Manager Gross indicated that any changes that would be made in the refuse or recycling collection would also necessitate changes to the City Code, as the present system is the one which has been codified. Mr. Gross stated that the Committee also noted that planning for any of these changes needs to be expeditious in order to have funds included in the next budget that is being prepared. The Committee also noted the need for education in the community for any changes that might result from any of these suggestions that might be adopted.

City Manager Gross stated that it will take time to get the information back on privatization.

Councilman Rice moved that Council adopt the recommendations of the Solid Waste Committee to collect recyclables every other week and reinstate the twice a week refuse collection starting with daylight savings time in April 1994, and putting out a Request for Proposals for privatization of refuse collection.

The City Attorney stated that Council could not amend the City Code without publishing a proposed ordinance.

Councilman Rice withdrew his motion.

Discussion ensued.

Vice Mayor Vest suggested that the Recycling Committee meet with the Solid Waste Committee.

Mayor Shelton recommended that this go back to the Solid Waste Committee and that Council's concerns be taken into consideration in further looking at this issue, and possibly the Committee could develop a timeline by which that will be brought back to Council.

Councilman Brookshier requested that information be prepared on the actual price of going to the second day refuse pickup again.

Mr. John Boardman spoke for a group of citizens deeply concerned over the recent action instigated by a group of Forest residents attempting to force a referendum on consolidation of the City with Bedford County. Mr. Boardman stated that the group would like to ask Council to be a resource center for them to help get the facts to the citizens. On behalf of the citizens' group, Mr. Boardman asked for access to the information the City has already gathered on this issue; and suggested that Council study the effects such a consolidation would have on the tax rates.

Mayor Shelton stated that Council has data from a small study prepared in 1990 by Dr. Mueller looking at various options including reverting to town status, consolidation, consolidation into a tier city, and other concerns. The Mayor stated that data is public record and is available for the citizens' group to review and utilize.

It was the consensus of Council to update the information in the study prepared by Dr. Mueller, and also that a study be done in-house regarding the impact on tax rates as a result of preparing a plan.

Mayor Shelton thanked Mr. Boardman and those in the group for their interest in this effort.

It was the consensus of Council to offer Councils' cooperation in providing information and data to the citizen's group.

Mayor Shelton adjourned the meeting at 8:35 p.m.