

12-14-93 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., December 14, 1993.

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

Members absent: Councilwoman Joanne A. Grahame.

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

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 November 23, 1993, were approved as mailed.

City Manager Gross stated that the Commissioner of Transportation, who had been invited to attend the dedication ceremony for the North/South Connector Road on December 22, will be unable to attend. He stated that the District Administrator for the Virginia Department of Transportation, Salem District, is planning to attend. Mr. Gross stated that the scheduled delivery date for the traffic lights is December 17.

Vice Mayor Vest commended Mayor Shelton for his comments made at the White House Conference on the effects of federal regulations on state and local governments (unfunded mandates).

Councilman Tharp noted that the groundbreaking ceremony for the Library will be held on December 22.

On motion by Councilman Brookshier, seconded by Councilman Otey, voted on and carried unanimously, Council appointed Ms. Virginia E. Robertson to serve on the Redevelopment and Housing Authority for the remainders of a four-year term expiring October 13, 1996, and appointed Mr. Allen F. Persinger to serve on the Redevelopment and Housing Authority for a four-year term expiring October 13, 1997.

The City Manager stated that during the Council meeting of November 23, Council heard a first reading of an ordinance which would amend the City Code by adopting rules and regulations for the City to begin regulating basic service rates charged by the franchised cable television operator. The ordinance is consistent with the requirements established by the Federal Communications Commission and by federal statute in the 1992 Cable Act, which allows local government franchising authorities to regulate only the basic tier services and, if necessary, to order refunds by the franchised operator. Mr. Gross stated that the ordinance has now been posted in accordance with Section 2-30 of the City Code.

Councilman Brookshier moved that the reading of the ordinance be waived. The motion was seconded by Councilman Vest, was voted upon and carried unanimously.

Councilman Rice moved for the adoption of the ordinance amending the City Code by adopting rules and regulations for regulating basic service rates charged by the franchised cable television

operator. The motion was seconded by Councilman Rice, voted upon and carried unanimously by the following roll call vote:

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

(The ordinance follows as adopted:)

**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.

City Manager Gross stated that in June 1993 the Virginia Public School Authority achieved debt service savings by refunding a number of its outstanding bonds. The VPSA wishes to distribute the savings to the City of Bedford and other localities who had previously sold bonds to the VPSA which were purchased with the proceeds of the refunded bonds. In order to get its share of the savings, the VPSA requires that the City issue new bonds in exchange for its old bonds currently held by the VPSA. The City will then receive its cancelled old bonds and its allocable share of the savings in a lump sum cash payment of \$6,925. Mr. Cross stated that these monies are restricted for use to fund capital projects and the VPSA Board strongly urges that the capital projects be for public schools. The bond counsel to the VPSA has prepared a resolution authorizing the issuance of the refunding bond and acceptance of the lump sum cash payment.

Councilman Tharp moved that the reading of the resolution be waived. The motion was seconded by Councilman Otey, voted upon and carried unanimously.

Vice Mayor Vest moved to adopt the resolution authorizing issuance of the refunding bond and acceptance of the lump sum cash payment. The motion was seconded by Councilman Brookshier, voted upon and carried unanimously by the following roll call vote:

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

Councilwoman Grahame absent

Mayor Shelton aye

(The resolution follows as adopted:)

RESOLUTION AUTHORIZING THE ISSUANCE OF \$1,170,000 GENERAL OBLIGATION SCHOOL BOND, REFUNDING SERIES 1994 A OF THE CITY OF BEDFORD, VIRGINIA, TO BE ISSUED IN EXCHANGE FOR AN AGGREGATE LIKE PRINCIPAL AMOUNT OF CERTAIN OUTSTANDING BONDS OF THE CITY OF BEDFORD, VIRGINIA, HELD, AND A LUMP SUM CASH PAYMENT TO BE MADE, BY THE VIRGINIA PUBLIC SCHOOL AUTHORITY, AND SETTING FORTH THE FORM AND DETAILS OF SUCH REFUNDING BOND.

WHEREAS, the City Council (the "Council") of the City of Bedford, Virginia (the "City") has received a written offer dated October 29, 1993 from the Virginia Public School Authority (the "Authority") to exchange certain outstanding general obligation school bonds of the City held by the Authority for (i) an aggregate like principal amount of non-callable bonds of the same tenor and (ii) a lump sum cash payment, and the Council has determined to accept such offer and to issue its general obligation school refunding bond in exchange for an aggregate like principal amount of certain outstanding bonds of the City held, and a lump sum payment to be made, by the Authority;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEDFORD, VIRGINIA:

1. Authorization of the Refunding Bond. The Council hereby determined that it is advisable to issue its refunding bond in the amount of \$1,170,000 (the "Refunding Bond") for the purpose of refunding an aggregate like principal amount of outstanding general obligation school bonds of the City the principal terms of which are set forth in Exhibit A (the "Refunded Bonds"). The issuance of the Refunding Bond in exchange for the Refunded Bonds and a lump sum cash payment upon the terms established pursuant to this Resolution is hereby authorized.

2. Details of the Bonds. The Refunding Bond shall have the principal provisions set forth in, and shall be issued as a single, typewritten bond substantially in the form attached hereto as, Exhibit C. On twenty (20) days written notice from the Authority, the City shall deliver, at its expense, the Refunding Bond in marketable form in denominations of \$5,000 and whole multiples thereof, as requested by the Authority, in exchange for the typewritten Refunding Bond.

3. Payment; Payment Agent and Bond Registrar. The following provisions shall apply to the Refunding Bond:

(a) For as long as the Authority is the registered owner of the Refunding Bond, all payments of principal of, premium, if any, and interest on the Refunding Bond shall be made in immediately available funds to the Authority at, or before 11:00 a.m. on the applicable Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption, if applicable, or if such date is not a business day for Virginia banks or for the Commonwealth of Virginia, then at or before 11:00 a.m. on the business day next preceding such Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption, if applicable.

(b) All overdue payments of principal or interest shall bear interest at the applicable interest rate or rates on the Refunding Bond.

(c) Crestar Bank, Richmond, Virginia, is designated as Bond Registrar and Paying Agent for the Refunding Bond.

4. Execution of the Bonds. The Mayor and the Deputy Clerk of the Council are authorized and directed to execute and deliver the Refunding Bond in the principal amount of \$1,170,000 and to affix the seal of the City thereto.

5. Pledge of Full Faith and Credit. For the prompt payment of the principal of and interest on the Refunding Bond authorized by this Resolution as the same shall become due, the full faith and credit of the City are hereby irrevocably pledged, and each year while the Refunding Bond shall be outstanding there shall be levied and collected in accordance with law an annual ad valorem tax upon all taxable property in the City subject to local taxation sufficient in amount to provide for the payment of the principal of and the interest on the Refunding bond as such principal and interest shall become due, which tax shall be without limitation as to rate or amount and in addition to all other taxes authorized to be levied in the City to the extent other funds of the City are not lawfully available and appropriated for such purpose.

6. Tax Covenant. The City covenants to take all action, and to refrain from taking any action, necessary under the Internal Revenue Code of 1986, as amended, to ensure that interest on the Refunding Bond will remain excludable from gross income for Federal income tax purposes to the same extent as it is excludable on the date of issue thereof.

7. Certificate. The appropriate officers and agents of the City are hereby authorized and directed to execute and deliver the Certificate substantially in the form attached hereto as Exhibit D, including the Form 8038-G appended thereto.

8. Exchange of the Bonds. It is determined to be in the best interests of the City to issue the Refunding Bond to the Authority in exchange for the Refunded Bonds and the lump sum cash payment set forth in Exhibit B. The appropriate officers of the City are hereby authorized and directed to exchange the Refunding Bond with the Authority for the Refunded Bonds and the lump sum cash payment. The Board

hereby determines that it is in the best interests of the City to authorize and direct the City Treasurer to participate in the State Non-Arbitrage Program in connection with the expenditure of the lump sum cash payment.

9. Certification and Filing. The Deputy Clerk of the Council is hereby authorized and directed to file a certified copy of this Resolution with the Circuit Court.

10. Further Actions. Each Council member and all other officers, employees and agents of the City are authorized to take such action as they or any one of them may consider necessary or desirable in connection with the issuance and exchange of the Refunding Bond for the Refunded Bonds and the lump sum cash payment and to accept and comply with the terms of the offer of the Authority.

11. Effective Date. This Resolution shall take effect immediately.

The City Manager stated that Council had received copies of the Audit Report prepared by Firebaugh & Berry, Inc. for the fiscal year ended June 30, 1993. Beginning with Fiscal Year 1993, the Auditor of Public Accounts will not longer issue approval letters; however, the City has been given oral approval from the Auditor of Public Accounts.

On motion by Councilman Brookshier, seconded by Councilman Tharp, voted upon and carried unanimously, Council accepted the Audit Report for the fiscal year ended June 30, 1993.

Mayor Shelton announced that Council will hold its next regular meeting on December 28, 1993.

City Manager Gross stated that Council needs to respond to the Redevelopment and Housing Authority regarding its offer of first refusal on the one-half acre property owned by the Authority.

The City Manager reported that Requests for Proposals on refuse collection have gone out and that Council will be given a list of the contractors to whom the RFP was sent.

Councilman Brookshier asked that a stop sign on Jackson Street at Grove Street be fixed.

Councilman Tharp noted that several trees in the cemetery are dying and have not been replaced. Mayor Shelton stated that five trees presently in Centertown Park as part of the Christmas decorations will be moved to the cemetery.

Mayor Shelton adjourned the meeting at 7:50 p.m.