

**12/12/2000 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 12, 2000.

Members present: Mayor G. Michael Shelton; Councilman Larry D. Brookshier; Councilwoman Mary L. Flood; Vice Mayor E. Thomas Messier; Councilman Thomas M. Padgett; Councilman W. D. Tharp; and Councilman Robert T. Wandrei.

Members absent: None.

Staff present: City Manager F. Craig Meadows; 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.

The Mayor presented John Hensley with a Certificate of Retirement and tokens of appreciation for his service to the City.

Mayor Shelton declared that the minutes of the November 28, 2000, regular Council meeting were approved as corrected.

The City Manager reported on various activities and information: sign ordinance draft; broadcasting Council meetings on WBLT Radio; tentative FY 2001-2002 budget schedule, and other items.

Councilman Wandrei asked about Council receiving current financial statements.

The City Manager stated that a financial statement is being prepared and will be distributed to Council as soon as possible.

Ms. Lisa Mansel, Bedford Area YMCA Interagency Liaison, spoke regarding a proposed Community Resource Center.

A brief discussion ensued.

The City Manager gave a brief overview of the Comprehensive Annual Financial Report for the Year Ended June 30, 2000. Mr. Meadows expressed thanks to several staff members for their work in helping to prepare the Financial Report.

The Commissioner of the Revenue recommended that Council amend and reordain the meals tax ordinance in order to conform the City Ordinance to technical definitions found in the state enabling legislation.

On motion by Councilman Tharp, seconded by Councilman Padgett, voted upon and carried unanimously, Council waived the reading of the proposed Meals Tax Ordinance.

On motion by Councilman Padgett, seconded by Councilman Brookshier, voted upon and carried unanimously by a roll call vote, Council adopted the ordinance regarding the Meals Tax. Roll call vote follows:

Councilman Brookshier	aye
Councilwoman Flood	aye
Vice Mayor Messier	aye
Councilman Padgett	aye
Councilman Tharp	aye
Councilman Wandrei	aye
Mayor Shelton	aye

The ordinance follows as adopted:

**AN ORDINANCE AMENDING AND REORDAINING  
THE ORDINANCE IMPOSING A MEALS TAX  
ON PREPARED FOODS AND BEVERAGES  
SOLD IN THE CITY  
AND REQUIRING COLLECTION BY SELLERS.**

**WHEREAS**, the City Council enacted an ordinance on November 24, 1992 imposing a tax upon foods and beverages sold within the City of Bedford; which Ordinance as amended on April 13, 1993 is in full force and effect; and

**WHEREAS**, the Commissioner of the Revenue has reported that certain technical amendments should be made in order to comply with changes in the enabling legislation adopted by the Virginia General Assembly;

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

**Section 1.** Chapter 22 (Taxation) of the Code of the City of Bedford (1974), as amended, shall be amended and reordained by the revision of Article V (Meals Tax on Prepared Food and Beverage) to read and provide as follows:

**Article V**

**Meals Tax on Prepared Foods and Beverages**

**Section 22-60. Definitions.** The following words and phrases, when used in this Article, shall have the following respective meanings, except when the context clearly indicates a different meaning:

Caterer: A person who furnishes or delivers meals on or to the premises of another, for compensation.

Food: All food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

Food establishment: Any place in or from which food or food products are prepared, packaged, sold or distributed in the City, including but not limited to, any food establishment, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionary, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

Meal: Meal shall mean any prepared food or drink offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch,

snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

Person: Any individual, corporation, company, association, firm, partnership or any group of individuals acting as a unit.

Purchaser: Any person who purchases a meal from a food establishment or from a caterer.

Commissioner: The Commissioner of the Revenue of the City and any duly authorized deputies or agents.

Treasurer: The Treasurer of the City and any duly authorized deputies or agents.

Seller: (a) Where the food establishment or catering business is a corporation, the president of the corporation.

(b) Where the food establishment or catering business is an unincorporated partnership or association, the general partner or partners or the managing agent of such unincorporated partnership or association.

(c) Where the food establishment or catering business is a sole proprietorship, the owner of the proprietorship.

(d) Where the food establishment or catering business is a non-profit organization, the organization or its executive director.

(e) In any of the above organizations, such other person as has been duly designated and authorized as an agent for the purpose of collecting the tax herein.

#### **Section 22-61. Levy.**

A. There is hereby imposed and levied by the City on each person a tax at the rate of five (5%) percent on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not.

B. The tax imposed by this Article applies to all sales of meals by a food establishment or caterer whose place of business is located within the City of Bedford, Virginia, without regard to the locality of delivery or possible use by the purchaser. The terms "sale" of meals means a final sale to the ultimate consumer.

All tax collections shall be deemed to be held in trust for City.

## **Section 22-62. Exemptions:**

A. The tax imposed under this Ordinance shall not be levied on the following items when served exclusively for off-premises consumption:

(1) Factory-prepackaged candy, gum, nuts and other items of essentially the same nature.

(2) Factory-prepackaged donuts, ice cream, crackers, nabs, chips, cookies and items of essentially the same nature.

(3) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on-premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.

(4) Alcoholic and non-alcoholic beverages sold in factory seal containers.

(5) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

(6) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U. S. C. § 2012, as amended except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (d) (3), (4) and (5) hereinbelow.

B. A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

C. The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

(1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.

(2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.

(3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.

(4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.

(5) Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.

(6) Food and beverages sold on an occasional basis, by a non-profit educational, charitable or benevolent organization, church, or religious body as a fund-raising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.

(7) Food and beverages sold through vending machines.

Section 22-63. Tips and Service Charges.

A. Where a purchaser provides a tip for an employee of a seller and the amount of the tip is wholly in the discretion of the purchaser, the tip is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided, in the latter case, the full amount of the tip is turned over to the employee by the seller.

B. An amount or percentage, whether designated as a tip or a service charge, that is added to the price of a meal by the seller, and required to be paid by the purchaser, is a part of the selling price of the food and beverage and is subject to the tax imposed by this Article.

**Section 22-64. Duty to Collect Tax - Collection of tax by Seller.**

A. Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this Ordinance from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.

B. All amounts collected as taxes by the seller under this Article shall be deemed to be held in trust until remitted to the City as provided in this Article. If the amounts collected as taxes are not paid as and when due, they shall thereafter become a debt of the Seller due to the City.

**Section 22-65. Reports and Remittances and Compensation of Sellers.**

A. All sellers in the City shall register as such with the Commissioner of the Revenue for collection of the tax imposed in this Article.

B. Every seller required to collect such tax shall file a report with the Commissioner within twenty (20) days after the last day of each calendar

month on forms prescribed by the Commissioner, signed by the seller, reporting the meal charges collected and the amount of taxes due thereon for the preceding month. Each such report shall be accompanied by the remittance of the amount of the taxes to the City, payable to the Treasurer.

C. All remittances received by the Commissioner shall be transmitted immediately to the City Treasurer.

D. For the purpose of compensating any Seller for accounting for and remitting the tax levied under this Article, the Seller shall be allowed a commission of two percent (2%) of the amount of tax due and accounted for in the form of a deduction of that amount in submitting his monthly report and remittance; provided the amount paid was not delinquent at the time of payment.

**Section 22-66. Interest and Penalties for Failure to File A Report or Make Remittance.**

A. When any seller shall fail to make any report or remit the tax required by this Article, there shall be imposed, in addition to any other penalties herein provided, a specific penalty to be added to the tax in the amount of Ten Percent (10%); provided, however, in no case shall the penalty be less than Ten Dollars (\$10.00), and such minimum penalties shall apply whether or not any tax is due for the period for which the report was required.

B. Interest shall accrue at a rate of Ten Percent (10%) per annum, which shall be computed on the taxes and penalty commencing Thirty (30) days from the date, the report or remittance is due.

C. If the failure to make any report is due to good cause shown to the satisfaction of the Commissioner, such report with or without remittances may be accepted exclusive of penalties.

**Section 22-67. Records to be kept.**

Every seller required to make a report or to pay and collect any tax under this article shall keep and preserve, for a period of three years, such suitable records of revenues taxable pursuant to this Article and such other records of account as may be reasonably necessary to determine the amount of taxes due pursuant to this Article. The Commissioner may inspect such records at reasonable times.

**Section 22-68. Obligations Upon Going Out of Business.**

Whenever any person required to collect and pay to the City a tax under this Article shall cease to operate or otherwise dispose of this business, any tax payable hereunder to the City shall become immediately due and payable through such date, and the person shall make a report and remittance thereof within ten (10) days of such date.

**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 service provided and 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 paper, 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 22-70. Civil Warrant for Collection of Delinquent Tax.**

The Treasurer is authorized, when any tax becomes delinquent under this Article, to cause a civil warrant to be issued for the collection of the tax, penalty and interest as soon as the tax becomes delinquent against the seller or person liable for payment of the same.

**Section 22-71. Advertising Payment or Absorption of Tax Prohibited.**

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of the tax imposed under this Article will be paid or absorbed by the seller or by anyone else, or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the tax.

**Section 22-72. Promulgation of Regulations.**

A. The Commissioner shall monitor and oversee the accuracy, timeliness and completeness of the filing of reports and payment of taxes levied under this Article. The Commissioner shall adopt and promulgate such rules and regulations and such forms not inconsistent with the provisions of this Article as deemed necessary for the effective administration of this Article.

B. In administering the provisions of this Article, the Commissioner may give any 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 sellers business for the taxable period in questions. The Commissioner may require that such seller or its agents and employees give testimony or answer interrogatories under oath respecting the sales 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.

**Section 22-73. Issuing Bad Check in Payment of Taxes.**

A. If any check tendered for any amount due under this chapter is not paid by the bank on which such check was drawn, the person for whom such check was tendered shall remain liable for the payment of such amount the same as if such check had not been tendered.

B. Any person who shall make, draw, utter or deliver a check tendered for any amount due under this chapter, knowing, at the time of such making, drawing, uttering or delivery, that the account upon which such check, draft or order is drawn has not sufficient funds or credits with such bank, banking institution, trust company, or other depository for the payment of such check, draft or order, although no express representations is made in reference thereto, shall be guilty of a Class 1 misdemeanor.

The word "credit" as used herein shall be construed to mean any agreement or understanding with the bank, banking institution, trust company, or other depository for the payment of such check, draft or order.

If such person shall fail to pay to the Treasurer the amount due together with interest within five (5) days after receiving written notice that such check, draft or order has not been paid to the holder thereof, then in any prosecution under this section the making or drawing or uttering or delivery, payment of which is refused by the drawee because of lack of funds or credit, shall be prima facia evidence of intent to defraud or of knowledge of insufficient funds. Notice mailed by certified or registered mail, evidenced by return receipt, to the last known address of the maker or drawer, shall be deemed sufficient and equivalent to notice having been received by the maker or drawer, and all other provisions of Code of VA. Section 18.2-183 shall be applicable to such prosecution.

In addition to the criminal penalty set forth herein, such person shall be personally liable in any civil action brought upon such check, draft or order.

#### **Section 22-74. Criminal Penalties for Violation.**

Any corporation or partnership officer, as defined in Virginia Code Section 58.1-2906, or any other person subject to the provisions of this Article failing or refusing to collect the full amount of the tax levied hereby, failing to make payment thereof to the City, failing or refusing to furnish any report herein required to be made, failing or refusing to furnish supplemental or other data required by the Commissioner, making a false or fraudulent claim for refund, or violating any other provisions of this Article shall be guilty of a Class 1 misdemeanor. Each failure, refusal, neglect or violation, and day's continuance thereof, shall constitute a separate offense. Convictions of such violations shall not relieve such person from the liability for taxes, penalties and interest or from the duty of collection and remittance of the tax provided for herein. An agreement by any person to pay the taxes provided for in this Article by a series of installment payments shall not relieve any person of criminal liability for violation of this Article until the full amount of taxes agreed to be paid by such person is received by the Treasurer.

#### Section 2.

An emergency exists and this ordinance shall take effect immediately upon passage.

On motion by Councilman Tharp, seconded by Vice Mayor Messier, voted upon and carried by a roll call vote, Council adopted the Resolution of Honor for Dr. Thomas H. Jennings. Roll call vote follows:

Councilwoman Flood	aye
Vice Mayor Messier	aye
Councilman Padgett	aye
Councilman Tharp	aye
Councilman Wandrei	aye
Councilman Brookshier	aye
Mayor Shelton	aye

The Resolution follows as adopted:

**RESOLUTION OF HONOR**  
**TO MEMORIALIZE THE CONTRIBUTIONS**  
**TO THE BEDFORD COMMUNITY BY**  
**DR. THOMAS HENRY JENNINGS**

**WHEREAS**, certain citizens in communities make significant personal and professional contributions of their talents, time, leadership and energies to improving the quality of life for the enjoyment of all other citizens; and

**WHEREAS**, Bedford, Virginia has particularly been enriched and improved by the contributions of such citizens for many years; and

**WHEREAS**, Dr. Thomas Henry Jennings, "Dr. Tom", who died at the age of 76 on November 26, 2000, exemplified the qualities of a strong community leader through his service in many capacities to the City of Bedford, the County of Bedford, the Commonwealth of Virginia and the United States; and

**WHEREAS**, Dr. Jennings served as a physician in the Bedford community for over 30 years, and gave of his talents, time, leadership, and energies by assisting numerous individuals, civic and religious organizations; and

**WHEREAS**, Dr. Jennings was a member of the Bedford Baptist Church for over 46 years, the Bedford Rotary Club and the Bedford Chamber of Commerce where he served on the Board of Directors and as President in 1964 and 1965. He helped the Boy Scouts of America as cubmaster of Pack 188 and was a member of the Bedford County Game and Fish Association. Dr. Jennings was on the Board of Directors of the Bedford Recreation Association, a member of the Bedford County School Board and Director of Bedford Vocational Education Foundation, Inc. He was a past member of the Board of Directors of the Avenel Foundation. Dr. Jennings was a charter member and past-president of the Bedford Genealogical Society, chairman of the cemetery survey committee and a member of the Board of Directors for the Bedford City/County Museum for ten years, and also served as Director Emeritus; and

**WHEREAS**, Dr. Jennings was a lieutenant NATS navigator in the U. S. Navy during the Pacific theater; and

**WHEREAS**, Dr. Jennings was a member of the Virginia Academy of General Practice where he served on the Board of Directors, Chairman of the Ad Hoc Committee to establish a Congress of Delegates, Chairman of the Constitution and By-laws Committee, Vice President and President elect from 1970-1971, and was a member of the Blue Ridge Chapter of Academy of General Practice and served on the Board of Directors, as President and delegate to VAGP in 1970. Dr. Jennings joined the staff of Bedford County Memorial Hospital in 1954 and became the chief of staff in 1959. Dr. Jennings helped establish Physicians Associates Limited (PAL) and was President from 1972-1976. He received physician of the year award for the state of Virginia in 1964, Outstanding Civic Leaders of America in 1967, and received the lifetime achievement award by the Bedford Chamber of Commerce in 1966.

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the City of Bedford, Virginia does hereby posthumously honor the significant contributions and achievements of Dr. Thomas Henry Jennings, in recognition of his lifelong service to the greater Bedford community, the Commonwealth of Virginia and the United States, and in recognition of the need for everyone to give of themselves in the manner set forth by this solid citizen and gentleman leader of Bedford, Virginia. This resolution upon its adoption shall be delivered to the family of Dr. Jennings.

The Mayor reviewed information regarding moving the City Council election:

Option 1 – Retain Tuesday after the first Monday in May of each even year

Option 2 – Move election to November in even-number years as allowed

Option 3 – Seek legislation to provide for November election in odd years

Discussion ensued.

Mayor Shelton stated that he, the City Manager, and City Attorney recommend the following: that Council support legislation that would be offered by Delegate Lacey Putney to amend the Code which provides for a November election for municipalities in an odd-numbered year and watch and see where that legislation goes before ultimately making the decision.

The City Attorney reviewed the steps necessary to amend the City Charter.

On motion by Councilman Wandrei, seconded by Councilman Tharp, voted upon and carried, Council supported the recommendation of the Mayor, City Manager, and City Attorney regarding the City Council election.

Mayor Shelton adjourned the meeting at 8:39 p.m.