



**Town Council  
Regular Council Meeting Minutes  
August 25, 2020**

The Town Council of Bedford, Virginia, held a regularly scheduled meeting on Tuesday, August 25, 2020 at 7:00 p.m. in the Council Chambers of the Town Municipal Building at 215 East Main Street, Bedford, Virginia.

**Town Council members present:**

Mayor Steve Rush, Vice Mayor Tim Black, Councilman Stacey Hailey, Councilman Bruce Johannessen, Councilman Bryan Schley, Councilman Darren Shoen, and Councilman C. G. Stanley

**Town Council members absent:**

None.

**Town Staff present:**

Town Manager Barrett Warner; Assistant Town Manager Sonia Jammes; Town Attorney William W. Berry, IV; Chief of Police Todd Foreman; Electric Department Director John Wagner; Public Works Director D. W. Lawhorne, Director of Planning and Community Development Mary Zirkle; Clerk of Council Debra B. Anderson; and Recording Secretary Julia Peters

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

## **APPROVAL OF MINUTES**

Mayor Rush declared that the minutes of the regular scheduled Council meeting of July 28, 2020 and the adjourned Council meeting of July 29, 2020 at the Bedford Middle School site were approved as presented.

## **REPORT OF TOWN MANAGER**

Town Manager Barrett Warner reported:

- Under the direction of Ms. Jammes, the Town has implemented a COVID-19 training program that is compliant with the directives of the Virginia Department of Labor.
- Instead of a single event, the Keep Bedford Beautiful Commission (KBBC) is designating the entire month of October as Clean Up Month. Public Works Director, Mr. Lawhorne, has put together kits for individual volunteer crews that can be checked out and returned at their convenience. This innovative approach that was proposed by Mr. Lawhorne will be evaluated for its success and possibly adopted as a long-term standard practice.
- The Bedford County Public School System has given notice that it is discontinuing its display of student art work on light poles in the Centertown area. It is an unfortunate outcome of the pandemic.
- The Bedford Fire Company recently received a grant for \$258,000 from the Federal Emergency Management Agency (FEMA) for use in recruitment and retention efforts over the next five years.
- The Town offices will be closed on Monday, September 7, 2020, in observance of the Labor Day holiday.

Mr. Warner also noted with sadness, the passing of Councilman Jim Vest and thanked Mayor Rush for his diplomacy in recognizing the event.

## **APPEARANCES BEFORE COUNCIL**

### **Chris Chapman, 3412 Virginia Byway, Bedford, VA**

Mr. Chapman said that he lives in the County but his electricity is produced by Bedford Electric. He has been looking to reduce his electric bill and has talked to some solar companies who have said that Bedford Electric is the only one in the state of Virginia that does not allow net metering. The Town Council decides whether net metering can be done and if they decided to change it, he could work with net metering, which means anytime there are days of overproducing, then in the night time when using heat, it will balance out some. He would like to know what is the thinking behind not allowing net metering.

Mayor Rush referred Mr. Chapman to Mr. Warner, Town Manager, and Mr. Wagner, Director of the Electric Department.

Mr. Chapman noted that per these solar companies, there is a lot of interest in Bedford but when people find out they cannot do the net metering, they walk away from it.

Mayor Rush thanked Mr. Bond for his presentation and Mr. Bond thanked the Council members for their time.

## **COUNCIL COMMENTS**

Councilman Shoen stated that due to addressing the Bays Memorandum of Understanding (MOU) tonight, he would recuse himself from both the discussion and vote because he has a client with a Worker's Compensation claim where Bays Trash Removal is the defendant.

Councilman Schley acknowledged sadness in hearing that Councilman Jim Vest had passed away. When he was first elected, Mr. Vest took a lot of time with him going over budgets and was instrumental in teaching him much about the Council. He sends his condolences to Mr. Vest's family and said he was a terrific man who did a lot for the Town of Bedford.

Vice Mayor Black echoed Mr. Schley's sentiments. Mr. Vest served on the Council for approximately 22 years and was a strong proponent of fiscal conservatism. He was always well prepared on the issues. Mr. Black would like members of Council to consider doing a resolution in honor of Mr. Vest and presenting it to his family members.

Councilman Hailey concurred with Mr. Schley and Mr. Black and said Mr. Vest was a very good man and was on Council for years. He helped him learn what he needed to know and where to go for answers. He was a very opinioned person but he will be missed.

Councilman Johannessen echoed what the other Council members said and noted that Mr. Vest took him aside several times for heart to heart talks and explained a lot of things to him. He always appreciated his counsel and will sorely miss him and so many others will miss him as well.

Mayor Rush said he and Mr. Vest had their differences but when it came to the budget, Mr. Vest was right. He was a true Southern gentleman and had the VMI air about him which made people respect him and he had a wonderful and successful life. Flags must be flown half-mast for such a man.

## **REPORT OF COUNCIL COMMITTEES**

Vice Mayor Black said the Finance Committee met earlier this evening. The CARES Act funding was discussed. The Town will receive a first amount of \$545,000 and will probably get a second funding close to the same amount. The committee talked about the possible eligible expenses for which these funds could be used. One big expense would be the business grant program which could be reimbursed and some other things that will be brought before Council in the near future. The budget rollovers were also discussed. An updated budget amendment will be prepared for the Council's review sometime soon. The committee also looked over the figures for the Bedford Middle School Project where there was a \$400,000 grant available through the EDA. From that line of credit, there is approximately \$50,000 still available to draw upon. The

financial statements were not talked about since it was the first month of the new fiscal year where there is not much to discuss.

Mayor Rush mentioned an item going back to his **Council Comments**. The Council received a report from Police Chief Foreman, the Bedford Police Department Teaching Plan. He commended Chief Foreman for compiling it, which is Management 101, and he is the first one he has seen with it and it is impressive.

## **REVISIONS TO AGENDA**

None.

## **SPECIAL PRESENTATION**

Mayor Rush called employee Donald Shifflett forward. The Mayor read a testimonial that had been prepared recognizing the work of Mr. Shifflett in the Electric Department. He joined the department as a lineman in June 1999. His work demonstrated an expert knowledge of electrical systems, operation, and construction. In October 2005, his work ethic and expertise were recognized with his promotion to line crew foreman, a position he held until his retirement. Donnie will be greatly missed by the staff of the Electric Department as he set a high leadership standard for others to follow. In his position, he worked countless hours in all types of weather to keep the lights on for the citizens of Bedford. He was known for helping his colleagues out during many dangerous and challenging situations. He can be proud of his service for the Town of Bedford and his skill as a true lineman. His colleagues appreciated the time Donnie spent with them, teaching them the basics of line work and was never bothered or put out by any of their questions. As he spent more time in a supervisory role, he never had an issue performing any task. He was a work colleague but also considered a friend by other linemen. He is wished the best in his retirement and he is thanked by all for his service.

Mr. Shifflett was given a parting gift by the Mayor and applauded for his service to the Town of Bedford.

## **PUBLIC HEARING**

Mr. Warner read the following public hearing notice.

### **PUBLIC HEARING NOTICE**

Notice is hereby given of a public hearing to be held by the Town Council of the Town of Bedford, Virginia, on August 25, 2020 at 7:00 PM at the Town Municipal Building, Council Hall, 215 East Main Street, for the purpose of approving a Memorandum of Understanding (MOU) and Agreement between the Town of Bedford (“the Town”) and Bays Trash Removal, Inc. (“Bays”).

The Agreement provides for the use by Bays of part of the Town's Solid Waste Transfer facilities and equipment, for Bays agreement to accept the Town's commercial, non-residential solid waste for transportation and disposal at the Pittsylvania Dry Fork Landfill in Pittsylvania County, Virginia, or at such other facility as shall be designated by Bays, and for reimbursement by the Town of disposal fees paid by Bays for disposal of such Town non-residential solid waste. The agreement and MOU shall be terminable upon 30 days notice by either party, but in no event terminating later than November 11, 2022. A copy of the MOU and Agreement is on file in the office of the Town Manager at the Town Municipal building.

Any individuals who are in favor of or opposed to the request will have an opportunity to express their views at this hearing.

By the Authority of the Town Council of the  
Town of Bedford

Mayor Rush opened the public hearing at 7:12 p.m.

**Attorney Howard Estes, Richmond, VA, representing Republic Services**

Mr. Estes stated Town Attorney William Berry had been very gracious in working with him and those he represents. He noted to Council that the MOU with Bays, Inc. is actually a contract for services and payment will be made for services rendered. There is an in-kind payment of previous use of the transfer station and the Town is also paying a bill from another landfill. The value of the contract is not just subject to 30-day renewals, but is a three year contract. Procurement laws are very clear that contracts for services, paying for service, are supposed to be procured. He asked the Council to defer taking action on the MOU that night and give an opportunity to follow the Procurement Act and see what the Town is gaining for value. This has been an agreement that has been negotiated among the parties but Council does not know of any other group or service that could provide additional value or a viable alternative to what is brought before them and it is their responsibility to fiscal conservatism, but if there is an opportunity to save the citizens money, it should be exercised and reviewed before voting.

**Tony Krasienko, Municipal Sales Manager for Republic Services, 516 Holcomb Path Road, Lynchburg, VA**

Mr. Krasienko introduced himself to the Council members and wanted to speak to them about the MOU with Bays, Inc. He said the Town owns and operates a valuable asset which is the transfer station. That facility could and should be a revenue generating asset. Under the MOU, the private entity would get free loading, use of the building, use of the equipment, all at cost to the city. Under this MOU, the city is subsidizing a private, for-profit business with city assets. Currently, the city's tip fee is \$60 per ton for everyone and under this MOU, the private entity gets it for the cost of disposal only. There is a benefit to a private entity of \$30 per ton or \$360,000 per year of benefit. The trucking costs are less than \$360,000 per year, and the Town is paying for disposal anyway. The trucking costs for the 15,000 tons that go through the transfer station equal approximately \$24 per ton. If the Town were to charge all entities \$60 per ton, the Town would essentially lose out on approximately \$180,000 of net revenue. During a standard

procurement process, hauling and disposal would be bid out and this would ensure that the Town has a fair open process and known costs long-term if they desire. He has seen hauling and disposal, or if the Town wanted to entertain and see what a lease operation benefit would be, leasing the transfer station out. There is not an operating landfill in close proximity anymore, and the transfer station is valuable to the Town or a private business. His company does this all across the United States where they lease property from towns, pay them a tip fee for every ton that comes through so the Town is out no costs, all they do is generate revenue. It is a great setup, but the Town loses that ability under this MOU. He urged the Town and Council to go forward with a fair, open, and legal procurement process to ensure the Town actually gets the best price and maybe entertain the idea of a lease operation versus a straight pay for haul and disposal. He believes the Town should look at this option because the transfer station could and should be extremely valuable.

There being no one else coming forward, Mayor Rush closed the Public Hearing at 7:19 p.m.

## **CONSENT AGENDA**

### **Appointment of Member– Redevelopment and Housing Authority**

Mr. Michael Payne has expressed an interest in serving on the Redevelopment and Housing Authority, if appointed by Council. The vacancy has been advertised in the local newspaper, and no other citizens have volunteered to serve. Mr. Payne previously served on the Housing Authority and has become a Town resident again.

### **ACTION REQUESTED:**

Council is requested to appoint Mr. Michael Payne to serve on the Redevelopment and Housing Authority, said term to expire October 13, 2023.

Councilman Hailey moved, seconded by Councilman Stanley, to appoint Mr. Michael Payne to the Redevelopment and Housing Authority, with said term to expire October 13, 2023.

Voted upon and carried by a roll call vote. Roll call as follows:

Vice Mayor Black	aye
Councilman Hailey	aye
Councilman Johannessen	aye
Councilman Schley	aye
Councilman Shoen	aye
Councilman Stanley	aye
Mayor Rush	aye

The motion carried with seven members voting aye.

## **OLD BUSINESS**

None.

## **NEW BUSINESS**

### **Memorandum of Understanding – Bays Trash Removal, Inc.**

Under the 2013 Reversion Agreement between Bedford County and the Town, the County agreed to accept and dispose of all solid waste from the Town's residential customers without any charge or fee as long as the county continued its policy of not requiring individual residents of the county to pay any charge or fee for such services. The Town as a result collected its own commercial refuse and transported it to the county landfill for disposal, but the Town paid the County tipping fees and disposal fees for such non-residential refuse.

The County advised the Town last fall that it cannot continue to accept the Town's commercial trash under terms acceptable to the Town. The Town was unable to reach a suitable agreement with the County or the firm that was contracting with the County for hauling and disposal services at another disposal site. However, Bays Trash Removal, Inc., a local independent contractor, has worked with the Town on a trial basis under an MOU dated November 11, 2019, under which Bays would use the Town transfer station for combining some its own private solid waste collection with the Town's commercial waste and for delivery without cost to a municipal disposal site in Pittsylvania County. The only cost to the Town would be reimbursement of disposal fees by the Town to Bays. There would be no cost to the Town for hauling. In addition, Bays had its own agreement with the Pittsylvania site which had a very low disposal fee. The MOU was limited to six months in duration at which time the parties could enter into further agreement or terminate the agreement.

The concept of the Agreement between the Town and Bays was reviewed and approved by the Town Council on June 23, 2020, with the understanding that the MOU was limited to three years, but subject to termination by either party on 30 days notice. The Town Attorney has drafted a supplement to the MOU in order to clarify the terms which have been negotiated with Bays. A public hearing was scheduled and conducted by Town Council to receive any public comment.

### **ACTION REQUESTED:**

The Town Council is requested to approve the proposed MOU which includes a provision of termination by either party with 30 days notice. The MOU provides for termination in any event on or no later than November 11, 2022.

Councilman Schley moved, seconded by Councilman Hailey to grant the MOU with Bays Trash Removal, Inc. Discussion followed.

Mr. Johannessen asked if there was an issue with the procurement requirement regarding the MOU and City Attorney Will Berry; IV answered he did not believe so.

Mr. Hailey asked if there was a change in the tipping fees, would that alter this MOU. Mr. Warner stated that a change in the tipping fees would be a material item for the Town and at that point the Town would consider providing notice of cancellation. Mayor Rush noted a change in tipping fees would be a separate issue.

Vice Mayor Black asked if the 30 day termination notice could be for any reason and Mr. Warner stated that was correct.

Voted upon and carried by a roll call vote. Roll call as follows:

Councilman Hailey	aye
Councilman Johannessen	aye
Councilman Schley	aye
Councilman Shoen	abstained
Councilman Stanley	aye
Vice Mayor Black	aye
Mayor Rush	aye

The motion carried with six members voting aye and one member abstaining.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN TOWN OF BEDFORD, VA AND BAYS TRASH REMOVAL INC.**

1. Parties. This Memorandum of Understanding (hereinafter referred to as “MOU”) is made and entered into by and between the Town of Bedford, VA, whose address is 215 East Main Street, Bedford, VA 24523, and the Bays Trash Removal Inc., whose address is 2432 Headens Bridge Road, Bedford, VA 24523.

2. Purpose. The purpose of this MOU is to establish the terms and conditions under which the Town of Bedford, VA and Bays Trash Removal Inc. will enter into a mutual agreement for commercial refuse transport to a specified landfill for disposal.

3. Term of MOU. This MOU is effective upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU and the governing bodies of the parties’ respective locality or ownership and shall remain in full force and effect for not longer than 6 months. At the end of the 6 month term, both parties may negotiate to extend or to terminate this agreement. This MOU may be terminated, without cause, by either party upon 30 days written notice, which notice shall be delivered by hand or by certified mail to the address listed above.



4. Responsibilities of the Town of Bedford, VA. The Town of Bedford agrees to allow Bays Trash Removal Inc. to bring the entire collection of their commercial waste to the Town of Bedford Landfill located at 856 Orange Street, Bedford, VA 24523. The Town agrees to waive all tipping fees associated with the processing of the entire collection of commercial refuse brought by Bays Trash Removal Inc.

5. Responsibilities of Bays Trash Removal Inc. Bays Trash Removal Inc. will transport all of the Town's commercial refuse waste in conjunction with Bays Trash Removal Inc. commercial refuse waste to a specified landfill at no cost to the Town of Bedford, VA. The Town will be responsible for the tipping fees at the specified landfill for commercial waste associated with Town collection only. Bays Trash Removal Inc. will be responsible for tipping fees at the specified landfill for commercial waste associated with Bays Trash collection only. Bay's Trash Removal Inc. will pay the total tipping fee expense at the specified landfill location and will then invoice the Town of Bedford, VA for the portion of the cost associated with Town's contribution of commercial refuse waste.

6. General Provisions.

A. Amendments. Either party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all parties to this MOU.

B. Applicable Law. The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of Virginia. The courts of the State of Virginia shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the Bedford General District Court, Bedford County, State of Virginia.

C. Entirety of Agreement. This MOU, consisting of three pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

D. Severability. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

E. Sovereign Immunity. The Town of Bedford, VA and its respective governing body does not waive its sovereign immunity by entering into this MOU, and fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

F. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable

right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

7. Supplemental Agreement. The following provisions shall be added as a supplement to the MOU between Town of Bedford and Bays Trash Removal Inc. dated November 12, 2019.

A. Specific Duties of Parties. The Agreement provides for the use by Bays of part of the Town's Solid Waste Transfer facilities and equipment, for Bays agreement to accept the Town's commercial, non-residential solid waste for transportation and disposal at the Pittsylvania Dry Fork Landfill in Pittsylvania County, Virginia or at such other facility as shall be designated by Bays, and for reimbursement by the Town of disposal fees paid by Bays for disposal of such Town non-residential solid waste. The Agreement and MOU shall be terminable upon 30 days' notice by either party, but in no event terminating later than November 11, 2022.

B. Independent Contractor Status, Indemnity, and Insurance. Bays shall perform its duties under this Agreement as an independent contractor, and nothing in this contract shall be construed to be inconsistent with this relationship or status. Bays shall indemnify the Town against all liability or loss and against all claims or actions based on or arising out of damages or injuries to persons or property in connection with the performance of delivery of refuse from the Town's transfer station to the landfill site specified for disposal of the commercial waste. Bays shall maintain at its expense worker's compensation and liability insurance to protect Bays and the Town from any and all claims of whatsoever nature of damage to property or for personal injury made by any person arising from operations by Bays under this agreement.

C. Notice of Changes in Tipping Fee. Bays agrees to provide Town with notices of any increases or changes in tipping fees incurred under this Agreement. Such notice by Bays shall be given to the Town within 10 days of the time Bays learns of changes of fees at the designated landfill.

D. Term of Agreement. This Agreement shall serve as a continuation of the Memorandum of Agreement executed between the Town and Bays effective on November 12, 2019, as supplemented herein, subject to cancellation and termination by either party on 30 days' notice to the other party, but in no event shall the Agreement terminate later than November 11, 2022.

8. Signatures. In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

\_\_\_\_\_  
[Signature] [Date]  
Bart Warner  
Town Manager

\_\_\_\_\_  
[Signature] [Date]  
Brad Bays  
Owner

**Virginia Industrial Revitalization Fund Grant Agreement**

The Town was awarded an Industrial Revitalization Fund (IRF) grant from the Virginia Department of Housing and Community Development (DHCD) for aspects of redevelopment at the former middle school complex. Two documents are required to be executed as part of the grant; Town Council would be a party to one of these documents.

The first document is between Town Council and the EDA as a Memorandum of Understanding (MOU) (Attachment 1) to formalize the arrangement that the EDA will be the pass-through entity to distribute grant funds for the project. This will also authorize the EDA to enter into a Restriction Agreement (Attachment 2). The Restriction Agreement is required by DHCD to restrict the use of the property for ten years to the uses approved to receive grant funds. This Restriction Agreement would be entered into by the EDA with DHCD and Waukeshaw Development. At a meeting on August 19, the EDA executed this Agreement, and executed the Memorandum of Understanding in anticipation of potential Council action.

This present request to execute an MOU related to a grant award follows a resolution passed by Town Council on February 26, 2019 in which Council authorized staff to apply for \$600,000 of IRF grant money. The Town was subsequently awarded \$550,000 to assist with redevelopment work at the “Old Yellow” school, gymnasium, and cafeteria renovations. This grant is not for work at the brick middle school building.

The Performance Agreement among the Town, Waukeshaw and the EDA compels the Town to be an “incentive conduit” for any additional incentives or funds identified that may benefit the project for rehabilitation and redevelopment at the former school complex. These two agreements for the grant award were drafted by attorney Mike Lockaby based on the Performance Agreement and in consultation with DHCD for requirements imposed by the grant to ensure there are protective provisions for grant performance.

**ACTION REQUESTED:**

Town Council is requested to execute the Memorandum of Understanding to formalize the EDA as a pass-through for a grant, which allows the EDA to enter into the Restriction Agreement with DHCD and to authorize release of funds in conjunction with closing on the property itself.

Mr. Stanley moved, seconded by Mr. Schley to approve the MOU that would authorize the EDA to act as the pass-through entity to distribute grant funds for the project. The MOU will also authorize the EDA to enter into the Restriction Agreement required by DHCD. Discussion followed.

Mr. Black noted that the Restriction Agreement means nothing until the property is bought and then there will be a recorded lien on the property. Mr. Warner said that was correct and it would be for a period of ten years. Mr. Black asked if the money would flow to the Town and the EDA prior to Mr. McCormack exercising his option in purchasing the property. Mr. Warner said the money would flow to the Town for this purpose but would not be disbursed until he closes and if he were not to close, then the grant would revert back to DHCD. Mr. Warner spoke to Mr. McCormack about his plans for closing and the last remaining funding hurdle is the historic tax credit program offered by the Department of Historic Resources. That application is due on September 1, 2020 and he anticipates a November/December timeframe to move forward with these plans. Mr. Black verified that if Mr. McCormack fails to perform anything that is enumerated in the Performance Agreement, he is on the hook, but the Town can potentially be on the hook as well, or the EDA. Mr. Warner acknowledged that the Town agreed to do this in the Performance Agreement and it was one of the grant mechanisms that was discussed in the earliest negotiations with Mr. McCormack.

Voted upon and carried by a roll call vote. Roll call as follows:

Councilman Johannessen	aye
Councilman Schley	aye
Councilman Shoen	aye
Vice Mayor Stanley	aye
Councilman Black	aye
Councilman Hailey	aye
Mayor Rush	aye

The motion carried with seven members voting aye.

## **ADJOURNMENT**

7:30 p.m.

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Steve Rush, Mayor

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Debra Anderson, Clerk of the Council