

May 28, 2013

The regular meeting of the Council of the City of Martinsville, Virginia, was held on May 28, 2013, in Council Chambers, Municipal Building, at 7:30 PM, with Mayor Kim Adkins presiding. Council members present included: Mayor Kim Adkins, Vice Mayor Gene Teague, Mark Stroud, Sharon Brooks Hodge and Danny Turner. Staff present included: Leon Towarnicki, City Manager, Brenda Prillaman, Eric Monday, Linda Conover, and Mike Rogers.

Following the invocation by Mayor Kim Adkins and Pledge to the American Flag, the Mayor welcomed everyone to the meeting.

Minutes: On a motion by Gene Teague, seconded by Mark Stroud, with a 5-0 vote, Council approved the minutes of the April 9, 2013 and April 11, 2013 meetings.

Employee Service Award recognition: Mayor Adkins read the following list of names recognizing city employees for their years of service:

SERVICE AWARD RECIPIENTS FOURTH QUARTER – FISCAL YEAR 12-13 FOR THE PERIOD OF APRIL 1 – THROUGH JUNE 30, 2013

Employee	Department	Service
Danny Cole	Public Works	5
Ronnie Gammons	Public Works	5
Krystal Davis	Sheriff	5
Kenith Shumate	Fire	10
Tim Agee	Electric	15
Steve Burgess	W/W Plant	20
Jackie Dillard	Sheriff	20
Ronald Nance	Utility Billing	25
Jimmy Blankenship	Electric	25
Bobby Phillips	Fire/Safety	35
Donna O'Dell	Human Resources	40

Mayor Adkins also recognized Wayne Davis of Public Works for his Employee Suggestion Award and Mr. Towarnicki briefed Council on Mr. Davis' suggestion and its implementation.

Public hearing School Board applicants: Mayor Adkins reported that pursuant to Code of Virginia Section 22.1-29.1, a public hearing is necessary to introduce and consider names of persons interested in appointment to a vacancy on the Martinsville School Board and to receive the views of citizens within the school division. This state code also states that no nominee or applicant whose name has not been considered at the public hearing shall be appointed as a school board member. Mayor Adkins opened the public hearing. Victor Correa, 1242 Sam Lions Trail, Nancy Baker, 919 Hunting Ridge Rd., Elizabeth Rivera, 701 Forest St., and Rives Coleman, 603 Mulberry Rd. asked to be appointed to the school board. Mayor Adkins closed the public hearing and advised candidates will be interviewed during closed session.

FY14 Budget Ordinance approval on second reading: On a motion by Gene Teague, seconded by Sharon Brooks Hodge, with the following recorded 4-1 vote: Adkins, aye; Hodge, aye; Teague, aye; Stroud, aye; and Turner, nay, Council approved the following FY14 Budget Ordinance on second reading:

City of Martinsville, Virginia ORDINANCE NO. 2013- U-2 The Budget for Fiscal Year 2013-14

BE IT ORDAINED by the Council of the City of Martinsville, Virginia, in regular session assembled May 14, 2013, that the following sums of money be and hereby are appropriated – by specified Fund – for the City’s fiscal year ending June 30, 2014, from the following Fund sources of estimated revenue:

SUMMARY STATEMENT OF BUDGET ESTIMATES, 2013-14

	Projected Fund Balance 06/30/13	Projected Revenues FY13-14	Budgeted Exp/Transfers FY13-14	Budgeted Depreciation	Projected Fund Balance 06/30/14	Net (Decrease) Increase
General Fund	\$6,183,809	\$29,332,826	\$30,393,005		\$ 5,123,630	\$ (1,060,179)
Meals Tax	\$ 801,197	\$ 1,900,250	\$ 1,900,250		\$ 801,197	0
Capital Reserve	\$ 37,887	\$ 710,809	\$ 710,809		\$ 37,887	0
TOTAL CAPITAL FUNDS	\$ 839,084	\$ 2,611,059	\$ 2,611,059		\$ 839,084	0
Refuse	\$2,070,034	\$ 1,797,000	\$ 2,097,136	\$ 150,000	\$ 1,919,898	\$ (150,136)
MINET/Fiber	\$ 0	\$ 561,601	\$ 561,601	\$ 0	\$ 0	0
Water	\$ 720,181	\$ 3,306,040	\$ 3,779,567	\$ 250,000	\$ 496,654	\$ (223,527)
Sewer	\$1,245,051	\$ 4,010,012	\$ 4,841,109	\$ 400,000	\$ 813,954	\$ (431,097)
Electric	\$4,979,375	\$17,426,072	\$18,821,027	\$ 400,000	\$ 3,984,420	\$ (994,955)
TOTAL UTILITY FUNDS	\$9,014,641	\$27,100,725	\$30,100,440	\$1,200,000	\$ 7,214,926	\$(1,799,715)
Cafeteria	\$ 815,490	\$ 1,701,710	\$ 1,701,710		\$ 815,490	0
Schools	\$ (108,298)	\$21,318,895	\$ 21,318,895		\$ (108,298)	0
School Grants	\$ 23,061	\$ 0	\$ 0		\$ 23,061	0
TOTAL SCHOOL FUNDS	\$ 730,253	\$23,020,605	\$ 23,020,605		\$ 730,253	0
CDBG	\$(627,574)	\$ 216,362	\$ 216,362		\$(627,574)	0
Housing Choice	\$ (3,758)	\$ 2,357,275	\$ 2,357,275		\$ (3,758)	0
TOTAL SP REV FUNDS	\$(631,332)	\$ 2,573,637	\$ 2,573,637		\$(631,332)	0
TOTAL ALL FUNDS	\$16,136,455	\$84,638,852	\$88,698,746	\$1,200,000	\$13,276,561	\$ (2,859,894)

Tax Rates:

Real Estate: \$1.0621 per \$100 assessed value
 Personal Property: \$2.30 per \$100 assessed value (unchanged) Machinery & Tools: \$1.85 per \$100 assessed value (unchanged)

Meals Tax Rate:

Six and one-half (6.5) 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.

Proposed Refuse Rate Increases from Current Rates:

Rate Class	Proposed Increase
Residential Service	\$2.25/month = \$18.50/month
Commercial Service	\$1.50/month = \$26.00/month

BE IT FURTHER ORDAINED by said Council that this Ordinance shall be effective on and after July 1, 2013.

Meals Tax Ordinance, first reading: City Attorney, Eric Monday, briefed Council on the ordinance reporting that while the meals tax has been increased from 6% to 6.5% in the FY13 Budget Ordinance, the levy also appears in Section 21-75 of the City Code, which must also be amended as follows (deletions in ~~strike through~~, additions in *italicized underlined*). On a motion by Gene Teague, seconded by Danny Turner, with the following 5-0 recorded vote, Adkins, aye; Teague, aye; Stroud, aye; Hodge, aye; and Turner, aye, Council approved the following ordinance, on first reading:

Ordinance No. 2013-4

BE IT ORDAINED by the Council of the City of Martinsville, Virginia, in Regular Session held on June 11, 2013, that Section 21-75 of the Code of the City of Martinsville, be, and hereby is, amended to read as follows:

Sec. 21-75. Levy.

There is hereby imposed and levied by the city on each person a tax at the rate of ~~six (6)~~ *six and one-half (6 1/2)* 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.

May 28, 2013

Transportation Safety Commission Bylaws change: Mr. Towarnicki and Ralph Lawson briefed Council on the bylaws change request from the Transportation Safety Commission.

For the past several years, the Transportation Safety Commission has had difficulty in maintaining enough regular members to effectively conduct the commission's business, even though efforts to recruit new members have failed. Some of the current serving members have either resigned from the commission or moved into the County. The commission is currently set up to have 9 regular members; however current attendance averages between 3 and 4 members. At the Transportation Safety Commission's regularly scheduled meeting of April 8, 2013, the members unanimously voted to submit proposed changes to the commission's bylaws to allow Henry County residents to serve on the commission, and to reduce the number of members present, required for a quorum, from 4 to 3 regular members. During the City Manager's normal weekly meeting with the Mayor and Vice-Mayor, an idea was discussed of possibly folding the work/responsibilities of TSC into the activities of the Planning Commission. The idea was vetted to the Planning Commission on May 7, 2013, and after much discussion and consideration, the Planning Commission voted to not assume the responsibilities of the Transportation Safety Commission.

After Council discussion and agreement that City Council would have control of how many TSC members were county residents, Council agreed to Bylaws changes presented by the Transportation Safety Commission allowing members of the TSC to be citizens of the City of Martinsville or County of Henry and a quorum consisting of at least 3 regular members. A motion was made by Mark Stroud, seconded by Danny Turner to approve amending the proposed changes to TSC Bylaws, and with a 5-0 vote, the motion was approved.

Consent Agenda: On a motion by Gene Teague, seconded by Mark Stroud, with a 5-0 vote, Council approved the following consent agenda:

BUDGET ADDITIONS FOR 5/28/13				
ORG	OBJECT	DESCRIPTION	DEBIT	CREDIT
FY13				
General Fund:				
01100909	490136	Recovered Costs - Fire Training ATM		500
01321102	505500	Fire Department - Travel & Training	100	
01321102	503171	Fire Department - Fire Burn Bldg Maint - Labor	100	
01321102	506130	Fire Department - Fire Burn Bldg Maint - Materials	300	
		Recovered costs from April 2013 ATM course		
01101917	442402	Categorical Other State - Confiscated Assets - C Atty		301
01221082	506105	Comm Atty - Conf Assets State	301	
01101917	442401	Categorical Other State - Confiscated Assets - Police		902
01311085	506078	Police Dept - Conf Assets State	902	
		state asset forfeitures		
01102926	443157	Categorical Federal - Safe Routes to School		2,250
01413146	503140	Street Marking - Prof. Services - Engineering	2,250	
		Reimbursement-Safe Routes to School Project		
01100909	490801	Recovered Costs - Senior Citizens		6,156
01100908	480420	Misc. - Donations/Senior Citizens		350
01714212	506016	Senior Center - Program Supplies	2,309	
01714212	501300	Senior Center - Part-time Wages	2,602	
01714212	502100	Senior Center - Social Security	161	
01714212	502110	Senior Center - Medicare	38	
01714212	506049	Senior Center - Vehicle Fuels	1,396	
		Transportation Grant & Donations		
Total General Fund:			10,459	10,459
Capital Reserve Fund:				
16101918	416506	Grants - State - Rescue Squad Assistance Fund		16,187
16572362	508081	Major Tools & Equipment - EMS	16,187	
		Additional grant reimbursement for purchase of (2) defibrillators		
Total Capital Reserve Fund:			16,187	16,187

Business from floor: Alfonzo Martin, 1006 Independence Drive-need for more frequent road clearing on Independence during winter weather and the need to slow trucks down. Ethan Harr, 157 Wedgewood Rd.-inquiry on expanding the skateboard slab at Wilson Park. Pam Heath, 217 Arrowhead Trail-expressed appreciation to Council for their support of schools.

Council comments: Turner-announced Mustangs first home game is this week and remembered two local D-Day veterans along with a reminder about Memorial Day services on Sunday. Stroud-thanked veterans for their service, especially his uncle, Mr. Clyde England.

City Manager comments: 1. Clarified that the city has not sent out letters to citizens about insurance policies for water and sewer lines. 2. Reported sidewalk repairs are starting and the paving

May 28, 2013

schedule is beginning. 3. Reported the city is using two NCI interns this summer, Caroline Dionne and Rebekah Moore.

Closed Session: In accordance with Section 2.1-344 (A) of the Code of Virginia (1950, and as amended) and upon a motion by Gene Teague, seconded by Mark Stroud, with the following 5-0 recorded vote: Adkins, aye; Teague, aye; Stroud, aye; Hodge, aye; and Turner, aye, Council convened in Closed Session, for the purpose of discussing the following matters: (A) Appointments to boards and commissions as authorized by Subsection 1. (B) Consultation with legal counsel and briefings by staff members, attorneys, or consultants pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by such counsel, as authorized by Subsection 7. At the conclusion of Closed Session, each returning member of Council certified that (1) only public business matters exempt from open meeting requirements were discussed in said Closed Session; and (2) only those business matters identified in the motion convening the Closed Session were heard, discussed, or considered during Session. On a motion by Gene Teague, seconded by Mark Stroud, with the following recorded 5-0 vote: Adkins, aye; Hodge, aye; Teague, aye; Stroud, aye; and Turner, aye, Council returned to Open Session.

Action taken:

Blue Ridge Library Board appointment—on a motion by Mark Stroud, seconded by Sharon Brooks Hodge, with a 5-0 vote, Council appointed Melanie Soulos to the Blue Ridge Library Board for a 4 year term ending 6/30/17.

Resolution settlement agreement with Confederated Tribes and Bands of the Yakama Nation—on a motion by Mark Stroud, seconded by Danny Turner, with a 5-0 vote, Council approved the following resolution regarding the settlement agreement:



RESOLUTION

WHEREAS, there is currently open and pending in the United States District Court for the Eastern District of Washington state a case styled *Confederated Tribes and Bands of the Yakama Nation v. Eric Holder, et al.*, case number CV-11-3028-RMP, to which the City is a party defendant; and

WHEREAS, counsel for the various parties have negotiated a resolution of this case and have recommended approval of this resolution to their respective clients; and

WHEREAS, this Council deems in the best interest of the City to accept this resolution:

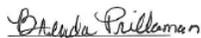
NOW THEREFORE, BE IT RESOLVED that the City Council of Martinsville, Virginia hereby accepts the settlement agreement attached hereto as an exhibit and incorporated herein as if fully set forth, and

BE IT FURTHER RESOLVED, that the City Manager is authorized to execute this settlement agreement on behalf of the City.



Kim Adkins, Mayor

Attest:


Brenda Prillaman,
Clerk of Council

May 28, 2013
Date Adopted

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the Confederated Tribes and Bands of the Yakama Nation, a federally-recognized Indian tribal government and as *parens patriae* on behalf of the Enrolled Members of the Confederated Tribes and Bands of the Yakama Nation, ("Yakama Nation"), and the County of Marshall, Mississippi, the City of Tupelo, Mississippi, the County of Roanoke, Virginia, the City of Martinsville, Virginia, the Town of Vinton, Virginia, and the County of Benton, Washington ("Settling Defendants") (singularly "Party"; collectively "the Parties"), relating to matters alleged in *Confederated Tribes and Bands of the Yakama Nation v. Eric Holder, et al.*, a lawsuit pending in U.S. District Court for the Eastern District of Washington under Cause No. CV-11-3028-RMP ("the Lawsuit"). This Agreement shall become effective upon the final signature by the Parties at bottom, the date of that final signature shall be the "Effective Date" of this Agreement.

RECITALS

In June 2011, the Yakama Nation initiated the Lawsuit against each of the Settling Defendants and various federal law enforcement agencies and employees thereof ("Federal Defendants"), in relation to a federal law enforcement entry upon Yakama Reservation trust lands on February 16, 2011 ("the Entry").

The Parties wish to avoid costly and lengthy litigation and to settle and compromise any and all claims and disputes of any kind or nature whatsoever between the Parties, relating to the Entry.

The Parties enter into this Agreement without admitting any liability. This Agreement shall not be construed as an admission of any wrongdoing, liability, any fact, or evidence of such, or admission of any violation of law by any of the Parties.

By entering into this Agreement, no Party is making any concessions about its rights, powers, authorities, or responsibilities, or otherwise expressing any conclusions about the sovereignty, Treaty-interpretation, constitutional, or other legal issues in the Lawsuit involving the Parties to this Agreement or other individuals and entities.

By virtue of this Agreement, the Yakama Nation does not waive, alter, or otherwise diminish the rights, privileges, remedies, authority, or services guaranteed by the Treaty With The Yakama. 12 Stat. 951 (1859). Nor does the Yakama Nation waive, alter or otherwise diminish its Sovereign Immunity, whether expressed or implied, by virtue of this Agreement or any action that may arise directly or indirectly from the same.

AGREEMENT

Based upon the foregoing, and in consideration for each and every term of this Agreement, including the above Recitals, the Parties agree as follows:

1. The Parties hereby settle and release all claims against one another. The Parties hereby fully release any and all existing or previously existing claims and disputes of any kind or nature whatsoever, against each other and any Party's present and former officers, employees, agents, and law enforcement officers (whether federally deputized or not), as well as any Party's insurance carrier (collectively "Released Parties") – whether such claims or disputes are known or unknown, asserted or unasserted, and which related to the Entry (the "Released Claims").

2. The Plaintiff, Yakama Nation, agrees that it will not reinstate any lawsuit, claim or legal action against Released Parties related to the Entry or to any and all allegations and claims set forth in the Complaint and Amended Complaints filed in United States District Court, Eastern District of Washington, Case No. CV-11-3028-RMP. Notwithstanding the foregoing, if any Released Party infringes upon or threatens Yakama territory, jurisdiction, or rights, nothing in this Agreement shall prevent Yakama Nation or any other injured person from bringing any suit, claim or legal action to protect its rights. The Yakama Nation shall dismiss its claims, Complaints and Amended Complaints against the Settling Defendants without prejudice and without costs, attorneys' fees or expenses to any Party, by stipulating to and filing Joint Motion To Dismiss papers within seven (7) business days of the Effective Date. Said Joint Motion and Order shall provide:

Plaintiff and Defendants the County of Marshall, the City of Tupelo, Mississippi, the County of Roanoke, the City of Martinsville, the Town of Vinton, Virginia, and the County of Benton, Washington, jointly move for an order dismissing Plaintiffs' claims against each other, only, without prejudice and without fees or costs to any Party.

The Parties to this joint motion have reached a compromise and wish to dismiss all claims against each other, without prejudice, and without fees or costs to any party.

A proposed Order is filed herewith.

3. The Settling Defendants shall not enter upon Yakama Indian Country (as defined by 18 U.S.C. 1151 and related federal and state law) without compliance with applicable federal, tribal, and state law and applicable treaties. Notwithstanding the foregoing, the Settling Defendants shall make all reasonable efforts to seek and obtain advance permission, if required by applicable federal, tribal and state law and applicable Treaties, should they wish to enter upon Yakama Indian Country.

4. This Agreement shall be binding and inure to the benefit of the Parties and the Parties' respective legal representatives, heirs, successors, assigns, employees, agents, and law enforcement officers (whether federally deputized or not). No other person or entity shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

5. Neither this Agreement or any term or provision hereof, may be changed, waived, discharged, amended, modified or terminated orally, or in any manner other than by an instrument in writing signed by all of the Parties hereto. This Agreement may be signed in counterparts. For all purposes, a facsimile or email copy of a signature shall be deemed and given the same force and effect as an original manual signature. Each Party shall take any and all reasonable steps and execute, acknowledge and deliver any and all further documents that any other Party may reasonably request to effectuate the intent and purposes of this Agreement.

6. This Agreement contains the entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. The above recitals are hereby made a part of this Agreement. This Agreement shall be deemed to have been drafted by all the Parties hereto, since all Parties were assisted by their counsel in reviewing and consenting to this Agreement, and no ambiguity shall be resolved against any party by virtue of its participation in the drafting of this Agreement.

7. Each Party has the full right and actual authority to enter into this Agreement.

Confederated Tribes and Bands of the Yakama Nation	County of Marshall, Mississippi
By: _____	By: _____
Its: _____	Its: _____
Date: _____	Date: _____
City of Tupelo, Mississippi	County of Roanoke, Virginia
By: _____	By: _____
Its: _____	Its: _____
Date: _____	Date: _____

City of Martinsville, Virginia	Town of Vinton, Virginia
By: <u>Tom Sawanek</u>	By: _____
Its: <u>City Manager</u>	Its: _____
Date: <u>May 28th, 2013</u>	Date: _____

County of Benton, Washington

By: _____

Its: _____

Date: _____

There being no further business, the meeting adjourned at 10:15pm.

Brenda Prillaman
Clerk of Council

Kim Adkins
Mayor