




To: The Honorable Mayor and City Council Members
From: John L. Rowe, Jr., City Manager 
Date: March 8, 2013
Subject: The Tolls Lawsuit

At one of your recent Council meetings, Council expressed its desire to support the plaintiff's in the "tunnel tolls" lawsuit (*Danny Meeks, et al. v. Virginia Department of Transportation, et al.*).

As you know, the City Attorney and I met with Patrick M. McSweeney, the plaintiff's attorney, to discuss how the City could assist the plaintiff's case. Mr. McSweeney suggested that Council consider adopting a resolution restating its opposition to the illegal and unconstitutional imposition of tolls for this project. This resolution is in addition to any financial support that Council may provide in assisting to underwrite the cost of the plaintiff's case.

The adoption of such a resolution that speaks to the various illegal and unconstitutional aspects of this tolling plan has value. In this regard, we have the enclosed resolution for your consideration.

We are placing this matter on the agenda for your Tuesday, March 12, 2013 Work Session for your discussion. After your Work Session discussion on this matter, we recommend that you consider this resolution during your Regular Session as an item submitted by Council, and we recommend that you give it your favorable consideration.

C: George Willson
Debra White

**A RESOLUTION BY THE COUNCIL OF THE CITY OF PORTSMOUTH, VIRGINIA
RESTATING ITS OPPOSITION TO THE ILLEGAL AND UNCONSTITUTIONAL
IMPOSITION OF TOLLS ON THE DOWNTOWN AND MIDTOWN TUNNELS AND
ON THE MARTIN LUTHER KING CONNECTOR AND DECLARING ITS SUPPORT
FOR PENDING LITIGATION THAT SEEKS A LEGAL DETERMINATION THAT
THE CONTRACT ALLOWING SUCH TOLLS IS WITHOUT LEGAL AUTHORITY.**

WHEREAS, on December 5, 2011, the Virginia Department of Transportation (VDOT) and Elizabeth River Crossings Opco, LLC, (ERCO) entered into a Comprehensive Agreement (Agreement) under the Public -Private Partnership Act of 1995 for the construction of a new Midtown Tunnel tube and a connector between the existing Martin Luther King Freeway and I-264, and for the refurbishing of the existing Midtown and Downtown Tunnels (the “Facilities”); and

WHEREAS, the Agreement permits ERCO to impose tolls on Facilities, to be reimbursed for or exempt from state and local taxes paid or imposed, and to be free financially from the risk of competition from future transportation improvements; and

WHEREAS, the tolls that will be imposed on the citizens and businesses of Portsmouth and Hampton Roads, as well as on visitors who use the Facilities are inequitable and not based on the actual improvements at each tolled facility; and

WHEREAS, the payment of tolls is mandatory as to a large number of citizens in the urban core areas of Portsmouth and Norfolk since they have no reasonable alternatives to usage of the Downtown and Midtown Tunnels; and

WHEREAS, the rates of the initial and future tolls have been calculated solely to satisfy ERCO’s business requirements and were established without regard to the onerous financial hardship that will be imposed on those users who can least afford the tolls or the E-Z Pass collection method; and

WHEREAS, the tolls are actually an illegal tax imposed on the users of the Facilities by an unelected entity in violation of the Constitution of Virginia; and

WHEREAS, the Agreement is an unconstitutional delegation to ERCO of the Commonwealth’s power to set rates and to the consideration and authorization of such rate increases by the State Corporation Commission thereby closing the door on all public comments on any future toll increases; and

WHEREAS, the City Council expressed its opposition to the imposition of tolls by resolution dated February 28, 2012, and requested that the members of the City’s delegation and the citizens of Portsmouth communicate that opposition to the Governor and to the General Assembly; and

WHEREAS, while the resolution requested that the tolls be replaced by a more equitable means of funding by the Commonwealth, no such funding alternative was developed, adopted, or implemented; and

WHEREAS, because of VDOT's ill-considered entry into a one-sided and virtually secretive Agreement with ERCO, Hampton Roads citizens and businesses have been forced to challenge the Agreement through the filing of a lawsuit (Meeks, et al. v. Virginia Department of Transportation, et al.) in the Portsmouth Circuit Court.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Portsmouth, Virginia that it hereby restates its opposition to the illegal and unconstitutional tolls that will be imposed on its citizens, its visitors, and its neighbors.

BE IT FURTHER RESOLVED that the City Council publicly declares its support for the remedies sought in the above-referenced litigation and requests that the General Assembly establish an equitable funding mechanism for the Facilities that addresses the financial challenges already facing two communities, Portsmouth and Norfolk, who have no reasonable or viable alternatives to the Facilities.

BE IT FURTHER RESOLVED that the City Clerk be and is authorized and directed to forward a copy of this Resolution to the Governor of the Commonwealth and to all the members of the Virginia General Assembly.

ADOPTED by the Council of the City of Portsmouth, Virginia at a meeting held on March 12, 2013.

Teste:

City Clerk