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**HERNDON TOWN COUNCIL
Work Session
Tuesday, February 19, 2019**

At a regular meeting of the Town Council of the Town of Herndon, Virginia, held in the Herndon Council Chambers Building, at 765 Lynn Street, Herndon, Virginia, on Tuesday, February 19, 2019, at 7:00 p.m., there were present:

- Mayor Lisa C. Merkel, presiding;
- Vice Mayor Sheila A. Olem;
- Councilmember Jennifer K. Baker;
- Councilmember Cesar del Aguila;
- Councilmember Pradip Dhakal;
- Councilmember Signe Friedrichs; and
- Councilmember Bill McKenna.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Anne Curtis, Chief Communications Officer; Elizabeth Gilleran, Director of Community Development; Page Kalapasev, Director of Information Technology; Tammy Chastain and John Irish, Deputy Directors of Public Works; David Stromberg, Zoning Administrator; John Cassella, Special Projects and Budget Manager; Captain Ron Thunman, Herndon Police; Michael Wallick, Transportation Planner; and Amina Ait-Bella, Legislative Assistant.

PRESENTATION

1. Proclamation, to recognize "Women's History Month," March 2019.

Mayor Merkel stated that the founders of Rowan Tree and the past presidents of the Herndon Fortnightly Club were invited to next week's presentation.

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There was no discussion on this presentation, which was scheduled for the February 26, 2019 public hearing.

PUBLIC HEARINGS

2. **Resolution, to consider Special Exception SE #19-01, to increase the number of nonresident persons permitted at a home-based business from a maximum of four in a 24-hour period to seven in a 24-hour period, 767 Monroe Street; Applicant: Heather Kepshire.**

The Zoning Administrator presented the staff report and PowerPoint dated February 19, which are on file in the Town Clerk's office. The application was for a special exception to expand a home-based business that would exceed the standards provided in the Zoning Ordinance. He outlined the application, location, and use, as provided in the staff report. The applicant was approved to operate a hair salon as a home-based business in 2016 and the town had not received any complaints for this address. The applicant was requesting an increase in the maximum of nonresident visitors in a 24 hour period from four to seven.

At its January 28 public hearing, the Planning Commission recommended approval of SE #19-01, with the proposed staff conditions. Staff also recommends approval of the proposed resolution, in accordance with staff's conditions.

There was a brief discussion amongst Council and staff on this item.

Ordinance, to consider Zoning Ordinance Text Amendment ZOTA #18-06, to amend Chapter 78 (Zoning), Article V (Planned Development Districts), Section 78-50.7 (Planned Development-Traditional Downtown District), Article VII (Use Regulations), Section 78-71.6 (Eating Establishments Use Category), Article XI (Development Standards), and Section 78-110.2 (Planting Standards for Landscaping), to make housekeeping changes for internal consistency.

The Zoning Administrator presented the staff report dated February 19, which is on file in The Town Clerk's office. This was part of the ongoing process to eliminate inconsistencies, errors, or obsolete provisions in the Zoning Ordinance, and to increase clarity and efficiency. He outlined the proposed changes to Section 78-50.7 – Planned Development-Traditional Downtown; Section 78-71.6 – Eating Establishments; and Section 78-110.2 – Planting Standards for Landscaping, as provided in the staff report.

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At its January 28 public hearing, the Planning Commission recommended approval of ZOTA #18-06. Staff recommends approval of the proposed ordinance, as presented.

In response to queries from Councilmember Friedrichs, the Zoning Administrator stated that he and the Community Forester could send her the list of invasive plants and show her where it was listed on the website.

Ordinance, to consider granting a third franchise amendment to Program Executive Office Enterprise Information Systems Project Manager Defense Communications and Army Transmission Systems Technology Applications Office, formerly the United States Army Corps of Engineers, for the abandonment of existing routes resulting in town ownership and control of this conduit, the addition of a new route, and the adjustment of franchise fees.

The Town Attorney reviewed the bid process, which is pursuant to the state code. She stated that the town expected only one bid and would follow the bid process at next week's meeting. This item would require a roll call vote at the public hearing.

The Deputy Director of Public Works presented the staff report dated February 19, which is on file in the Town Clerk's office. The proposed Third Amendment to the franchise agreement would approve the abandonment of 4,510 feet of conduit. A new route consisting of 4,262 feet of conduit would start at the town boundary on the west side of Monroe Street and continue north on Monroe/Van Buren Street to Spring Street. The Third Amendment would also approve the abandonment of 1,592 feet of existing conduit. The Deputy Director of Public Works outlined the location of the conduit, as listed in the staff report and shown in attachment "Exhibit A" to the proposed ordinance. Staff recommends approval of the proposed ordinance, as presented.

The Town Attorney stated that because of the need for the relocation, staff anticipates this would not be a type of conduit where the town would need a future bid in the near future.

There were brief comments from Council.

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3. **Resolution, to consider Comprehensive Plan Amendment CPA #18-02, to establish a design concept for street improvements on South Elden Street, between Sterling Road and Herndon Parkway, and incorporate by reference the Design Concept by AECOM consultants.**

The Transportation Planner presented the staff report and PowerPoint, dated February 19, which are on file in the Town Clerk's office. The proposed resolution was a Comprehensive Plan Amendment (CPA), to establish a design concept for street improvements on South Elden Street, between Sterling Road and Herndon Parkway, and to incorporate by reference the Design Concept by AECOM consultants (dated November 30, 2017, revised June 15, 2018).

The Transportation Planner reviewed the background and process for the proposed CPA; proposed comprehensive plan language; and location and types of proposed improvements. This was a limited plan amendment, establishing a design concept for street improvements on South Elden Street, between Sterling Road and Herndon Parkway.

At its January 28 public hearing, the Planning Commission provided a recommended resolution, which was attached to the staff report. Staff recommends approval of CPA #18-02, as presented.

There was a brief discussion amongst Council and staff on this item.

There was a brief question and answer period between Councilmember Friedrichs, the Transportation Planner and the Director of Community Development, regarding the Virginia Department of Transportation's (VDOT) warrants and process for approving an intersection.

CONSENT AGENDA

4. **Resolution, to reappoint members to the Town Council's Pedestrian and Bicycle Advisory Committee.**

There were no comments on the Consent agenda.

DISCUSSION

5. **Revenue Projections.**

The Special Projects and Budget Manager presented a PowerPoint dated February 19, which is on file in the Town Clerk's office. He discussed the major themes for annual revenue trends and reviewed the FY 2020 General Fund

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projections, as provided in the PowerPoint. This year, the year-to-date revenues for FY 2019 were not included due to changes in recording methodology.

The Special Projects and Budget Manager stated that year over year projections were indicating a similar overall dollar increase in net new excise tax revenue compared to the recent years. He stated that this year, the Business Professional and Occupational License (BPOL) revenue was down approximately \$1.5 million in actuals, which had caused a \$400,000 hit to the budget. This occurred because of changes recorded by major town business. He stated that the projected annual increase in property tax receipts, based on preliminary projections from Fairfax County, increased by \$475,000 over last year. The Special Projects and Budget Manager stated that FY 2019 and FY 2020 numbers indicate an upward trend over past two years, and that the FY 2020 projections were above average compared to the period FY 2013 to FY 2018.

The Special Projects and Budget Manager reviewed several of the recurring General Fund revenues; FY 2020 projection; and trends from FY 2015-FY 2020, for the following categories, as outlined in the PowerPoint:

- Property taxes (commercial and residential);
- Transient Lodging;
- BPOL;
- Local Sales Tax;
- Meals Tax;
- Parks & Recreation Fees; and
- Intergovernmental Revenue.

The Special Projects and Budget Manager stated that the preliminary General Fund projected revenue increase from FY 2019 to FY 2020 was 0.6 percent, or \$220,500. He stated that the property tax valuation growth rate demonstrated an increase during the past two cycles. With relatively low growth rates, he stated that large one-time changes in particular revenues could significantly impact overall revenue. Additionally, the projected BPOL loss would basically offset gains from property tax revenue. The town would not have actual receipts for FY 2019 until March of this year.

There was brief discussion amongst Council and staff on the revenue projections.

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Property Tax & Meals Tax

There was a brief question and answer period between Councilmember Friedrichs and the Special Projects and Budget Manager on property taxes.

In response to queries from Councilmember del Aguila, the Special Projects and Budget Manager stated that he believed it was FY 2012 when the Council lowered the town property tax rate. He believed the Council increased the meals tax rate the same year.

In response to queries from Councilmember Dhakal regarding returning to the FY 2012 property tax rate, the Special Projects and Budget Manager stated that the town would receive approximately \$475,000 per penny if it increased the property tax rate.

There was a brief question and answer period between Councilmember Dhakal and the Special Projects and Budget Manager about the process for changing property tax rates.

In response to queries from Councilmember del Aguila regarding meals tax collection, the Town Manager stated that it is collected through voluntary compliance. The town gives the restaurateurs six percent to calculate and remit the meals tax to the town, if the taxes are submitted on time or before the deadline.

Councilmember del Aguila expressed concern over providing the restaurateurs six percent for submitting their taxes on time. He suggested that this be removed from the calculation of the meals tax.

In response to queries from Councilmember Baker, the Town Manager stated that he would have to look up the dollar amount that equated to six percent of the meals tax provided to restaurants for timely payment.

In response to queries from Mayor Merkel, the Town Manager stated that the jurisdictions he was aware of provided some meals tax revenue to the restaurants for making on time payments and stated that staff could conduct an analysis.

Councilmember del Aguila stated that the town was different from other localities, and while it was important to compare amongst jurisdictions, to him, it was a false equivalent.

In response to Councilmember del Aguila's comments, the Town Manager stated that he would like to provide the Council with a point of comparison.

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The Town Manager stated that the town would like the county to collect the town's real estate taxes, which could save some money and staff costs. Those total costs were unknown at this point.

In response to queries from Mayor Merkel, the Town Manager stated that staff was using internal resources to gather data on its real estate tax collection.

Mayor Merkel stated that there were multiple issues in town that could benefit from risk management.

Councilmember Baker stated that she researched the six percent of the meals tax last year. She would look for the email with the information, but she recalled it was not a large dollar amount.

Councilmember Friedrichs stated that she recalled the six percent of the meals tax was approximately \$150,000.

Councilmember Baker stated that when the town implemented the meals tax, the rest of the county did not have it. The six percent was intended to soften the blow of the tax and to decrease the burden on businesses. She supported discussing this matter.

Councilmember Dhakal provided comments about the six percent of the meals tax and how it was calculated. He stated that it could cover staff auditing costs and suggested that the town consider it.

The Town Manager stated that the town could not outsource the property tax audit. He stated that this person must be a town employee.

The Special Projects and Budget Manager agreed with the Town Manager, but he stated that the employee did not have to be full time.

Councilmember Baker stated that the individual who audits the property taxes would have more time freed up if the county collected that tax.

Councilmember McKenna discussed some of the Department of Public Works (DPW) fees and fines. He stated that there could be some revenue that town might not have calculated based on those projections.

In response to Councilmember McKenna's comments, the Town Manager stated that in March, staff would discuss the refuse and recycling fees with Council.

Vice Mayor Olem stated that she enjoyed her budget meeting with staff and that they answered all her questions.

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There was a brief question and answer period between Councilmember Friedrichs and the Special Projects and Budget Manager on the town's portion of the state sales tax.

Councilmember Baker provided comments about tax rates and stated that the county raised property taxes last year. She thought that meals tax would be the logical place to raise taxes, rather than the property tax, should Council make that decision. She stated that the rest of the tax rates would not have the same level of impact that the meals tax would.

The Town Manager stated he heard from the county that they did not intend to raise real estate tax rates this year.

Councilmember Friedrichs echoed Councilmember Baker's comments about the property tax rate. She stated that she had spoken with a lot of citizens that would not be able to afford an increase in the property tax rate.

6. Update on Downtown Redevelopment.

The Town Manager stated that in two weeks, staff hoped to have a preview of the balanced budget, with a further discussion of town tax rates.

The Town Manager provided an update on downtown redevelopment. He stated that he recently had a productive meeting with the Comstock project manager. Right now, staff was reviewing the site plan. When the site plan was ready, Comstock indicated that they would file for Certificates of Appropriateness with the Heritage Preservation Review Board (HPRB). He discussed the financial elements associated with the arts center relocation with the project manager, who intended to discuss it with his colleagues and would advise Arts Herndon. He hoped to have news about the site plan in the next several weeks.

Mayor Merkel asked if this update on the downtown could be provided at the public hearings, to which the Town Manager agreed.

7. Code of Ethics.

The Town Attorney presented a PowerPoint dated February 19. She reviewed sources of authority for the Council ~ including the Code of Virginia, which provides special and inherent authority and rules governing conduct or behavior; and Robert's Rules of Order, which has a chapter on disciplinary procedures. The Town Attorney reviewed disciplines and penalties that were available to the Council, or that the Council could consider adding. These included: censure; fines; and removal from committees, a meeting, or from office. She stated that there were no fines stated in the Code of Virginia or in the town's current ethics

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ordinance, and there were legal questions if fines were appropriate. An individual could only be removed from office if authorized by State Code or Charter. The Town Attorney stated that codes, ordinances, and policies vary widely, and the town has a broad and inclusive existing ordinance.

There was brief discussion amongst Council and staff on the code of ethics.

There was a brief question and answer period between Councilmember Friedrichs and the Town Attorney on the definition of ethics.

Councilmember Friedrichs asked for a definition of the term "ethics."

In response to queries from Councilmember Friedrichs about social media, the Town Attorney stated that some of the town's social media policies were listed in the Council's handbook and in other resolutions and policies. She stated that the town's current social media policies could be incorporated in the code of ethics, should Council want to include it.

Councilmember Friedrichs provided comments about the Town of Amherst's code of conduct and suggested that everyone take a look at it. She thought the town's current code of conduct was too vague.

Councilmember Dhakal suggested adding policies for using social media and for handling confidential information.

Councilmember del Aguila stated that a Councilmember could draft a social media policy and submit it to staff. He expressed concern over retaliation on social media.

Responding to Councilmember del Aguila, the Town Attorney stated that was difficult, because one person's free speech could be another's attack, and vice versa.

There was further discussion amongst Council and staff.

Vice Mayor Olem stated that she had heard concerns expressed about conversations going on over text message or other means while a Council meeting was being held. She also had seen Councilmembers being derogatory toward staff in the past, which she thought should be included in the code of ethics.

Councilmember Friedrichs stated that she would share the Town of Amherst's code of conduct with the Town Attorney, who could forward it to Council. She suggested that the Council review it and draft their own ideas, which could be discussed at the next work session.

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There was further discussion amongst Council and staff.

Councilmember del Aguila stated that he was more concerned about the Council's behavior rather than punishment. He stated that he would not have his cell phone out or text during a Council meeting.

Councilmember Dhakal emphasized the need for a policy on social media usage.

The Town Attorney provided comments. She stated that the current code of ethics addresses issues with staff and issues between Councilmembers. She stated that the Freedom of Information Act (FOIA) covers confidential information.

Mayor Merkel suggested referencing FOIA in the town's code of ethics, rather than including an entire section on it.

The Town Attorney stated that it might be helpful to use some of the specific information about confidentiality, closed meetings, and possibly other sections of FOIA in the code of ethics.

Mayor Merkel stated that she understood the concerns over texting during meetings, but she often has her phone close by during meetings in case her family needs to reach her during an emergency.

Councilmember del Aguila stated that he gives his phone to the Town Clerk during meetings, and she could get him if needed.

The Town Attorney stated that she would advise caution in having an employee preform the task of monitoring phones.

Councilmember del Aguila stated that it was his understanding that text messages were subject to FOIA.

Mayor Merkel provided comments about communication and implored the Council to talk to one other.

Vice Mayor Olem echoed Mayor Merkel's comments about talking to one another outside of formal meetings.

In response to queries from Mayor Merkel, the Town Attorney stated it was her understanding that Councilmembers would review the code of ethics and bring their suggestions forward for a discussion at a future work session.

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Mayor Merkel suggested that the Council send their suggestions for the code of ethics to the Town Attorney and Town Clerk via email in the next two weeks. The code of ethics could be discussed at that time during a work session.

The Town Attorney agreed with Mayor Merkel's comments.

AMEND THE AGENDA

Vice Mayor Olem moved that the Council go into closed meeting following the conclusion of tonight's work session agenda, and that the agenda be so amended.

Councilmember del Aguila seconded the motion.

Following discussion and with the concurrence of the majority of Council, the agenda was so amended.

ROUNDTABLE

1. **Councilmember Friedrichs:** Asked if there was a way for Council to be advised immediately when a closed meeting was planned and what the subject was for the closed meeting. She asked that staff call Council and provide this information when they decide on holding a closed meeting.

The Town Manager stated that he and he Town Attorney usually schedule closed meetings.

The Town Attorney stated that she could not share contents of the closed session prior to it occurring and that she could discuss this further with Councilmember Friedrichs.

Vice Mayor Olem stated this information would be useful in reviewing appointments to boards and commissions.

The Town Attorney stated she would determine if she could send an attorney-client privilege memorandum prior to closed meetings with the information requested by Councilmember Friedrichs. She stated it might not be possible in every situation.

There were further comments from Council.

The Town Attorney stated that the Council could discuss the exemptions and options for closed meetings in an open session.

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2. **Councilmember McKenna:** Stated that the Council/staff budget meetings went well, and he appreciated staff's efforts.
3. **Councilmember Dhakal:** As he shared at the last meeting, he stated that he attended an event for International Meditation Day, which he thought went really well. He saw several other elected officials there and enjoyed five minutes of meditation. He stated this was something the town should consider recognizing.

Councilmember Dhakal shared information provided to him by a citizen on a "Disagree Agreeably" leadership training webinar, which was organized by dalecarnegie.com. He stated that he would share the link for more information and to register with Council.

Councilmember Dhakal stated that at the last work session, Mayor Merkel asked him about recognizing Nepalese-Americans, which he discussed with members of that community. This community was excited and talked about how they could contribute more to the town. He stated that there were other groups who should be recognized ~ including the Hispanic community ~ who then might be interested in contributing to the town.

Mayor Merkel stated that the town recognizes "Hispanic Heritage Month" and planned to do the same this year. She would like to get together with Councilmember Dhakal to discuss a meaningful day or event to recognize the Nepalese community.

Councilmember Dhakal stated that the community considered recognizing the Nepalese New Year, which occurs around April or May. He suggested holding the recognition on a weekend during those months.

Mayor Merkel stated that the Council could present a proclamation at a Town Council meeting and/or present it at another event.

4. **Councilmember del Aguila:** Stated that earlier today, the Council received an email from a resident on Pearl Street regarding drainage issues.

The Town Manager stated that staff was working on this matter.

Councilmember del Aguila began a discussion about reading Town Council proclamations. He would like the Council to agree on a process where they all take turns reading them. Councilmembers would have the option to yield their reading time to other Members of Council.

Mayor Merkel stated that the Town Clerk had researched this, and for many years, the mayor has assigned who reads the proclamations. She stated that if a

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Councilmember requests a proclamation for specific group, or it was meaningful to them, they would read it.

Councilmember del Aguila stated that he would like to introduce a new policy for this body.

Vice Mayor Olem stated that she also spoke with the Town Clerk about proclamations. She suggested sending Council a list of the upcoming proclamations for review in advance.

Councilmember del Aguila emphasized that he would like a process to determine whose turn it was to read proclamations.

Councilmember Baker agreed with Vice Mayor Olem's suggestion.

Mayor Merkel asked the Town Clerk to send out a list of upcoming proclamations to Council, so Council would have time to look at and ask for what they wanted to read.

Councilmember McKenna stated he agreed with Mayor Merkel's statement.

Councilmember del Aguila stated he was specifically told that this was a "jump ball" process.

Mayor Merkel disagreed with Councilmember del Aguila's statement.

5. **Councilmember Baker:** Stated that she was going to ask about the citizen who wrote in about Pearl Street, but that was discussed. She had no further comments.
6. **Vice Mayor Olem:** Echoed her colleagues' comments about checking on the Pearl Street issue.

Vice Mayor Olem suggested that Councilmember Dhakal contact John Dudzinsky, Community Forester, or Friends of Runnymede Park, if he was interested in organizing a clean-up. She stated that Arts Herndon and other organizations are always looking for individuals to volunteer and get involved.

Mayor Merkel asked the Town Clerk's office to put Councilmember Dhakal in touch with the Community Forester.

7. **Mayor Merkel:** Stated that with the pending snow storm tonight, Fairfax County Schools were already closed tomorrow. The town would collect recycling

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on Thursday rather than tomorrow and trash usually collected on Thursday would be picked up on Friday.

COMMENTS FROM THE TOWN MANAGER

The Town Manager echoed Mayor Merkel's comments about trash and recycling and the weather.

The Town Manager stated that it was his understanding that the ARB/HPRB meeting would go on tomorrow night as scheduled, unless conditions deteriorate.

The Town Manager stated that he planned to leave for Staunton, Virginia, for the Virginia Local Government Manager's Association tomorrow at 3:00 p.m., which was when the rain was supposed to start. He would be there Thursday and Friday this week. When he returns, he would discuss the Pearl Street matter with staff working on the issue.

The Town Manager stated that a page in the Guidebook provided to Council at its orientation was a remnant of the City of Williamsburg's model, which was used to help create the Guidebook. There was an error in referencing the charter on that page and staff was working to provide an update to Council.

CLOSED MEETING

At 9:00 p.m., Vice Mayor Olem moved that the Herndon Town Council go into a closed meeting under:

- Section 2.2-3711(A)(7) of the Code of Virginia, to consult with legal counsel regarding actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Council.

Councilmember McKenna seconded the motion.

Mayor Merkel confirmed the staff that needed to be present for the closed meeting. She voiced concern that this closed meeting was not advertised.

The question was called on the motion, which carried by a 6-1 vote. The Herndon Town Council went into a closed meeting.

Vote: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna and Vice Mayor Olem voting "Aye." Mayor Merkel voting "No."

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RECESS

At 9:00 p.m., Mayor Merkel called a brief recess, and at 9:05 p.m., the closed meeting reconvened in the Herndon Council Chambers Building, all members present, and with Mayor Merkel presiding.

CLOSED MEETING (CONTINUED)

On motion of Vice Mayor Olem, seconded by Councilmember McKenna, and carried by unanimous vote, the Herndon Town Council reconvened in public session at 9:37 p.m.

Vote: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

On motion of Vice Mayor Olem, seconded by Councilmember McKenna, and carried by unanimous vote, the Herndon Town Council approved the following Certification of Closed Meeting.

Vote: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Certification of Closed Meeting

WHEREAS, the Town Council of the Town of Herndon has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by this Town Council that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed, or considered by the Town Council.

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VOTE:

Ayes – 7

Nays – 0

ABSENT DURING VOTE: 0

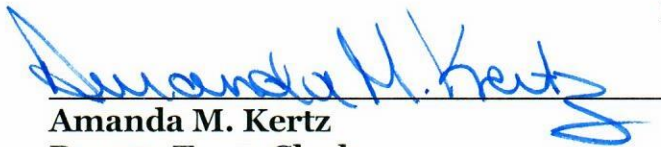
ABSENT DURING MEETING: 0

ADJOURNMENT

There being no further business, the meeting adjourned at 9:37 p.m.



Lisa C. Merkel
Mayor



Amanda M. Kertz
Deputy Town Clerk



Minutes approved by Town Council: February 26, 2019