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HERNDON TOWN COUNCIL
Work Session
Tuesday, March 5, 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, March 5, 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; Jennie Tripoli, Director of Finance; Cindy Roeder, Director of Parks and Recreation; Maggie DeBoard, Chief, Herndon Police; John Cassella, Special Projects and Budget Manager; and Amina Ait-Bella, Legislative Assistant.

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PUBLIC HEARING

1. **Ordinance, to grant a first franchise amendment to Fiberlight of Virginia, LLC.**

Mayor Merkel stated that the town had received one bid, which would be entered into the record at next week's public hearing. She stated the council would follow the bid process, and action on the proposed ordinance would be by roll call vote.

The Deputy Director of Public Works presented the staff report and PowerPoint dated March 5, which are on file in the Town Clerk's office. Staff recommends approval of the ordinance, as presented.

In response to a question by Councilmember Friedrichs, the Deputy Director of Public Works stated that no major disruptions to traffic were anticipated. She said that most of the work would be in the sidewalk areas.

DISCUSSION

2. **FY2020 Budget.**

Mayor Merkel stated that comments received on the proposed FY20 budget have been entered into the record.

The Town Manager distributed a packet to support the discussion on the FY20 budget. The document is posted on the town's website and paper copies were made available in the lobby for the general public. The packet titled "Town of Herndon Council Work Session – Budget, Tuesday, March 5, 2019" is on file in the town Clerk's office outlined as follows:

- I. "FY20 Departmental Budgets" - contains General Fund department operating budget information by department; subdivided by major expenditure category (personnel, operations & maintenance, and operating capital). Data is supplied for the current fiscal year (FY19) and for next year (FY20). Information regarding dollar and percent changes also provided;

The top portion "Grand Total GF" - contains a General Fund roll up of the department information that follows with the addition of \$582,117 in personnel (total personnel \$25,399,444) and the addition of \$375,000 for operating capital (total Capital \$799,100). Those two additions are not contained in the individual department numbers.

- II. "FY20 Budget Reductions" - contains items that have been removed during the budget discussions.

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- i. The first two sections (Personnel & Capital Improvement Program) contain backup attachments. These attachments have been indexed (Guide). The designation "NA" indicates that there are no supporting attachments.
- ii. Section three (Operations & Maintenance) contains two supporting attachments (A&B), both relating to the Community Grants program.
- iii. The very bottom of the document contains estimated revenue generation, by unit, for the applicable tax identified.

The Town Manager indicated that there were recent fluctuations in revenues and reviewed the changes in revenue and expenditure patterns, and changes in the General Fund.

There were increases to personnel costs. There was a seven percent increase to the cost of healthcare, following three years of no changes. Increases to the cost-of-living and pay-for-performance were also included. He stated that there was a proposed increase to salaries for the police to keep parity with Fairfax County.

The Town Manager stated that the Operation and Management budget started to incorporate operational expenses that had been considered capital in previous years. Staff has been changing the allocation of funds for improved accounting.

In response to a question by Councilmember del Aguila, the Town Manager stated that staff was working towards transitioning all operational expenses to the General Fund to provide a clearer picture of what it cost to operate the town.

The Town Manager indicated that there was a 3.5 percent increase in the General Fund. He discussed the pattern of changes in revenues and department operations.

Unfunded Priorities

The Town Manager reviewed the unfunded priorities. These are items that have been requested by staff but could not be accommodated in the initial proposed budget. He stated that there has been an unanticipated significant decrease to the BPOL revenues, and in order to fund the Capital Improvement Plan (CIP), staff proposed a one cent increase to the meals tax to offset the change in BPOL, which would have otherwise covered CIP expenditures. One penny in the meals tax equates to approximately \$900,000.

The Town Manager stated that staff wanted to deliver a balanced budget to council earlier than previous years. He said the idea to present a budget earlier was taken from Mercury Payton, Town Manager, Town of Vienna. The town

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would need to find a way to fund and amend the base budget should requests be discussed at the work session.

The Town Manager reviewed the items requested that could not be funded, such as additional personnel and capital projects, including: a Deputy Town Attorney, Risk Manager, Police Officers and other personnel. He stated that the town-owned building at 1481 Sterling Road needed discussion.

The Town Manager continued review of requested items of the proposed FY20 budget.

The Town Manager stated that he asked the Town Attorney to provide guidance on the legality of allowing a line item in the budget dedicated to ArtsHerndon. He stated that there were concerns about compliance with the Public Procurement Act. There were \$60,000 in additional grant requests.

The Town Manager continued review of requested items of the proposed FY20 budget.

There was a brief question and answer period among council and staff about 1481 Sterling Road.

Councilmember del Aguila requested an analysis of the cost of repairs and system upgrades to the building. He stated that he would like to see the costs associated with relocating staff in that building to another location in the FY20 budget.

The Town Manager stated that during the mid-year budget review, staff may be able to provide more information on the 1481 Sterling Road property.

The Town Manager asked if council had any further requests.

Vice Mayor Olem requested a copy of grant requests received by the town.

Councilmember Friedrichs asked if there were sustainability initiatives in the FY20 budget. The Town Manager and Deputy Director of Public Works reviewed current and future sustainability initiatives.

Councilmember Friedrichs stated that comments from the March 2 Community Roundtable supported an increase in the meals tax and not the property tax. She stated that it seems that raising meals tax was a done deal.

Mayor Merkel stated that it was not a done deal, but a suggestion. The Town Manager stated that he would be proposing an increase and that it would be the Council's decision whether or not to recommend an increase to the meals tax.

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Councilmember Friedrichs clarified that for the purpose of a balanced budget, the town would have to raise revenue or cut something significantly. She stated that not spending money on infrastructure or maintaining staff would be a waste of money in the long run.

Councilmember Friedrichs reviewed personnel items in the budget. She stated that at the Council's orientation, staff was asked what was needed in their departments to make their operations run smoother. She said Councilmember del Aguila was focused on this at the orientation. Staff had provided great explanations of what was needed. She stated that she hoped the town could find some way to include these.

The Town Manager stated that the current risk management of the town is done by the Town Attorney and the Directors of Finance and Human Resources.

There was brief discussion among council and staff about the costs of a Risk Manager for the town.

Mayor Merkel stated that she would support a Risk Manager position.

Councilmember Dhakal asked how an auditor would be able to help collect BPOL.

The Town Manager stated that the focus of previous auditors has been on the property tax collections.

There was further discussion about the meals tax increase and expenses of auditing for the town.

Mayor Merkel stated that the discussion that the council needs to have is about the unfunded items.

In response to queries from Councilmember del Aguila, the Director of Finance explained the purposes of the revenue stabilization fund ("rainy day" fund). She stated that if there is an unexpected three percent decline in recurring general fund revenues, then it can be activated. The contingency fund is used for any revenue shortfall. The capital reserve fund is to be used for capital related expenditures including debt pay down. The unassigned fund balance is more flexible, but they must maintain a 20 percent balance in that account.

There was further discussion among council and staff about the reserves.

Councilmember Dhakal asked if using reserves affects the town's triple-A bond rating.

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The Director of Finance stated that as long as the funds continue to be replenished, it would not affect the bond rating.

Councilmember Friedrichs asked whether putting money in reserves rather than spending the funds denies the town anything.

There was further discussion among council and staff about reserve accounting.

Councilmember Friedrichs asked the last time taxes were raised. Mayor Merkel stated that in FY12, the council raised the meals tax.

Councilmember Dhakal asked how the town's real estate tax compares to other localities. There was brief discussion among council and staff about comparable jurisdictions.

The Town Manager responded to Mayor Merkel's inquiries that the one cent meals tax increase and the projected BPOL decrease were part of the proposed budget.

Councilmember Baker stated that she would like to review grant requests in the budget. She suggested that the town "get back" to the business of government. She stated that she supports funding HCTV due to the services that they provide. She stated that the Town should eliminate or dramatically scale back the remaining \$118,000 of grant funding. She stated that funds for grants could be allocated to fund a risk manager or another police officer, with the focus on the "business of government." She stated that she believes many of the grants are outside of the scope of government.

Vice Mayor Olem and Councilmember del Aguila stated support for the grants.

Mayor Merkel asked how these grants are different than the process outlined under the Public Procurement Act (PPA). There was brief discussion among council and staff about the solicitation and grants process.

The Town Attorney asked if the question at hand is whether the Town's grant process is appropriate. Mayor Merkel stated that she would like that information to be able to answer that to the public when necessary.

There was further discussion among council about grants to organizations.

Council requested that the Town Attorney provide a document about grants compared to line item requests.

Councilmember Baker restated her concerns for funding grants and for what the town is responsible. There was brief discussion among council and staff.

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The Town Manager reviewed the budget process and upcoming deadlines.

The Town Attorney responded to Mayor Merkel's question for clarification about the legality and process of grant funding.

Mayor Merkel stated that the question she is anticipating is why the town continues certain grants but would not fund a line item to ArtsHerndon. She stated that she would like to be able to answer that definitively.

The Town Manager stated that if it were not for the BPOL reduction, the conversation would be different.

Councilmember Baker discussed the request from ArtsHerndon for a line item in the town's budget. The Director of Finance clarified that when the President and CEO of ArtsHerndon previously worked with the City of Fairfax, it was a line item through the Cultural Arts piece of city's budget. She questioned if there was relevance between that and the current ArtsHerndon request for a line item in the town's budget.

Councilmember Friedrichs stated that the idea had not come from the President and CEO of ArtsHerndon, "but from us." Mayor Merkel asked for clarification from Councilmember Friedrichs.

Councilmember Friedrichs stated that she, Vice Mayor Olem and then-candidate del Aguila had discussed this "quite a while ago."

Councilmember Baker asked if this was in a public meeting.

Vice Mayor Olem stated that it was when Councilmember del Aguila was a candidate and had not yet been elected.

Councilmember Friedrichs stated that the three of them had met to discuss it while running for the Town Council. She stated that it was part of the platform they were running on. She stated that they had not checked with the Town Attorney prior to the discussion.

Councilmember Baker stated that she was not aware of that discussion. She asked whether there was relevance to the fact that the President and CEO of ArtsHerndon was previously funded through a city.

The Director of Finance and the Town Manager responded to Councilmember del Aguila's inquiry about the "rainy day fund."

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The Town Manager responded to Councilmember Dhakal's inquiry about the BPOL revenues.

RECESS

Councilmember del Aguila left the room at approximately 8:18 pm.

At 8:20 pm, the meeting recessed briefly, and reconvened at 8:25 pm, with all members present, and with Mayor Merkel presiding.

3. Council Discussion of Code of Ethics.

Mayor Merkel stated that at the February 19 work session, she asked council to send their suggestions for the Code of Ethics to the Town Attorney and Town Clerk via email for discussion. She stated the council received a few comments last night.

Vice Mayor Olem asked for clarification on a CCO document that was distributed to Council. Councilmember Friedrichs stated she distributed the CCO document, which she received from a resident, Susan Powell. Vice Mayor Olem stated that the CCO document had no relevance on the topic under discussion. Councilmember Friedrichs stated that was correct, however, she wanted to provide the information to council.

Mayor Merkel asked council to begin the discussion on a Code of Ethics.

Councilmember Friedrichs stated that she had provided copies of the Town of Amherst's Code of Ethics, which is on file in the Town Clerk's office.

Councilmember Friedrichs stated she talked with the Town Manager of the Town of Amherst about how Herndon's code was fairly small and not specific, and she asked whether Amherst had any suggestions for Herndon. She stated that the Amherst code was not new and somewhat old fashioned in its verbiage, however, she like its positive idealist approaches to ethics. She stated that should the council adopt this version, she would ask the Town Attorney's advice on #6 "Adopt policies and programs that support the rights and recognize the needs of all citizens regardless of race, sex, age, religion, creed, country of origin or disability," since it doesn't have any reference sexual orientation. Other than that, she stated she felt the Amherst version is "awesome."

Vice Mayor Olem stated that she had read the Amherst version and it encompassed everything that she would hope council would do.

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Councilmember del Aguila stated he read it over and it was pretty straight forward.

Mayor Merkel stated that she felt the Amherst version was overkill and that it was very detailed. She asked what the council wanted to accomplish that was not already in the Town Code and the information provided by the Town Attorney in her presentation several weeks ago. She stated that if she were a citizen reading through the Amherst version, she would question what is going on that this level of detail on the behavior of council was needed.

Vice Mayor Olem stated that one living in the town for a while would have seen some things going on. For instance, prior to being on council, she stated she recalls former members of council berating members of the public and staff.

Councilmember Baker referred to the CCO document and asked for clarification. Councilmember Friedrichs stated that Susan Powell wrote the document and asked her to distribute to council.

There was brief discussion among council about the code of ethics, social media policy and an ongoing legal case in Loudoun County.

The Town Attorney responded to an inquiry from Councilmember Friedrichs. She discussed the policies that were already in place in the Local Government Conflict of Interest Act and the Code of Virginia. She stated that any additional policies to the Town Code should not conflict with the Code of Virginia.

Following further discussion, Councilmember Dhakal asked for a gap analysis between what is covered in the Code of Virginia and the Town Code, and what may be missing.

The Town Attorney requested council to provide scenarios and specific suggestions to produce the document, and she stated that she would help council craft the language for the best use.

In response to Councilmember del Aguila's inquiry, the Town Attorney read the Town Code Section 2-5, which is the current code of ethics. She reviewed what the current code allows councilmembers to do.

There was brief discussion among council about possible scenarios covered under the code.

The Town Attorney responded to Councilmember del Aguila's inquiries. She stated that if a councilmember felt the scenario was a concern, they could bring it to the entire council. She stated the current code of ethics allows a councilmember to bring an issue to the entire council.

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Councilmember del Aguila stated that he did not get that.

Councilmember Friedrichs stated that since the Town of Amherst document was not provided until that afternoon, she recommended continuing discussion at the next work session.

Councilmember Baker stated that the council had been discussing this for a few weeks. She stated that it was brought forward by Vice Mayor Olem and Councilmembers del Aguila and Friedrichs. She stated that it was apparent that they felt something is missing, and that to her, it felt as though the rest of council is trying to figure out what they want. She stated that she feels the rest of council was content with the current code, but she was happy to have that discussion. She stated that it feels like they are dancing around something that they are not being open about. She asked Vice Mayor Olem and Councilmembers del Aguila and Friedrichs to be more direct in order for council to address their specific concern. She stated that this just feels weird.

Councilmember del Aguila asked Councilmember Baker if discussing a code of conduct feels weird to her.

Councilmember Baker stated that that was not what she said. She stated that what she said was that the three councilmembers bringing this up – who sued a fellow councilmember the previous term – seemed to have some issue with either a previous councilmember, something that previously happened, or something they want to address going forward. She asked them just to be direct. She stated that otherwise they are just dancing around this potential minutia of changes to the code. She stated that it feels like there was more to the story. She stated that it feels as though there was more that they are trying to adjust so they can go after someone or do something.

Councilmember Friedrichs stated that no one was going after anybody.

Councilmember Baker stated, “not yet.”

Councilmember del Aguila asked Councilmember Baker if she had done something.

Mayor Merkel stated that this was serious.

Councilmember Baker stated that it was rude for Councilmember del Aguila to ask her that.

Councilmember del Aguila stated that it was rude to insinuate that they are somehow plotting to take action on someone.

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Councilmember Baker stated that they did directly take action on someone last term.

Mayor Merkel stated that that was the last term, and even if the council adopted everything in the current discussion, it did not apply to last term.

Councilmember Baker stated that this was coming from somewhere.

Councilmember del Aguila stated that this was a campaign topic. He stated that in his discussions, there was a perception that there were things going on as far as transparency and a revised, updated, more detailed code of conduct would be beneficial.

Mayor Merkel stated that was helpful to know.

Councilmember del Aguila stated that they have said that before.

Councilmember Baker stated that they had not.

Councilmember Friedrichs stated that they maybe have discussed that.

Councilmember Baker stated that that was not clear and that is why she was asking.

There was brief explanation from Councilmembers del Aguila and Friedrichs.

The Town Attorney clarified Councilmember del Aguila's example statement was already in the state code.

Councilmember del Aguila asked if it could be in both.

Mayor Merkel stated that she wanted to make sure that there was nothing contradictory.

In response to discussion from council, the Town Attorney stated that she can add the ideals and specific statements to the code. She stated that she needed direction.

Councilmember Friedrichs asked to meet individually with the Town Attorney.

Mayor Merkel asked if there were specific issues that needed to be addressed.

Councilmember Friedrichs listed principles based on feedback from the Community Roundtable. Mayor Merkel suggested adding a statement about prevention of intimidation.

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The Town Attorney shared Williamsburg's Code of Ethics, and she asked if providing definitions for certain terms would be helpful to add.

Following additional discussion, the council agreed to address a social media policy and creating an ordinance or revising the current policy, and to continue discussion at the following work session with examples of amendments to the current code of ethics.

ROUNDTABLE

1. **Councilmember McKenna:** Stated that he had a good week and met with 11 people outside of the Community Roundtable meeting. He stated that there is a wave of outreach currently and is happy that they are having dialogue.
2. **Councilmember Dhakal:** Stated that he attended "Entrepreneurship 101" hosted by the Fairfax County Economic Development Authority. He stated the benefits of entrepreneurship, and that there were people from Herndon who attended. Details were provided about how to start a business and obtain certificates. He asked if it would be possible to bring something like this to the Town and simplify the process to start a business.

Councilmember Dhakal commended staff for the Community Roundtable held on Saturday, March 2.

Councilmember Dhakal congratulated council and staff for recognition of the Tree City USA award by the Arbor City Foundation. He stated that he is happy to see the Town working toward financial and environmental sustainability.

3. **Councilmember Friedrichs:** Thanked staff for efforts for the Community Roundtable. It was surprisingly well attended, and she there were many new people. She stated that "the one unfortunate thing" was they were not able to bring in underserved populations.

Councilmember Friedrichs stated she received a document from a citizen about "Creative Community Outreach," which is on file in the Town Clerk's office.

Councilmember Friedrichs stated that the radio station WAMU was advertising NextStop Theatre, and PBS was filming at ArtSpace Herndon for their new installation.

Councilmember Friedrichs asked for an update about a citizen comment at the February 26 public hearing regarding an animal ordinance. The Town Attorney stated that an update was provided in the previous week's dispatch.

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Councilmember Friedrichs asked about the ability of council to answer citizen questions posed during the "Comments from the Audience" portion of the public hearing meetings.

There was brief discussion among council and staff on ways to make council's limitations more apparent to the public.

The Town Manager stated that staff can provide a screen at the public hearing outlining the guidelines for the public and council.

4. **Councilmember Baker:** Stated that she was sorry to miss last week's public hearing and the Community Roundtable, as she was out of the country in Phuket, Thailand. She stated that she is looking forward to reading the Community Roundtable notes.
5. **Councilmember del Aguila:** Asked for an update on the downtown redevelopment site plan. The Town Manager stated that it was in its fourth submission and staff had recently resubmitted comments to Comstock. Mayor Merkel asked the Town Manager to provide a statement at every public hearing about the redevelopment project.

Councilmember del Aguila stated concern for a resident on Pearl Street. The Town Manager stated that staff research determined that the water line did not belong to town or the HOA. There was brief discussion.

Councilmember del Aguila stated that his impression of the Community Roundtable was "amazing." He stated that he would like to see more diversity. There was brief discussion among council.

Councilmember del Aguila apologized to Councilmember McKenna about an email exchange.

Councilmember del Aguila thanked Mayor Merkel for providing a document about reading proclamations at a public hearing, but it was still unclear to him and he would like to see a process. There was discussion among council and staff on this matter. Councilmember del Aguila stated that he would continue to discuss this item until a process was addressed.

Councilmember del Aguila asked if the appearances of downtown and Pine Street properties could be addressed with the Town Code.

There was brief discussion among council and staff about this item.

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6. **Vice Mayor Olem:** Stated that she was looking forward to the next Community Roundtable meeting, and she received good feedback. She stated that there were many comments about bus services.

Vice Mayor Olem asked about the other businesses that will be going in to the former KMart shopping center. The Director of Community Development confirmed the businesses.

Vice Mayor Olem asked for an update on a potential council retreat. The Town Manager stated that the details have not been finalized.

Vice Mayor Olem asked for a historic timeline of the downtown redevelopment project in response to questions she received at the Community Roundtable. The Director of Community Development stated that she had provided that information in a previous presentation.

Vice Mayor Olem stated that ArtSpace Herndon would be having an opening this weekend. She invited those interested to attend.

Vice Mayor Olem stated that she would contact the Special Projects and Budget Manager for the grant documents.

7. **Mayor Merkel:** Stated that she was sorry to miss the Community Roundtable, and that she was attending her daughter's birthday party.

COMMENTS FROM THE TOWN MANAGER

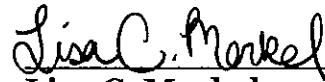
In conclusion, following the Council's discussion, the Town Manager reviewed the following directives to staff:

- Provide a "splash screen" at public hearings about the limits on council and public interaction;
- Town Council retreat;
- Rain and possible water contamination at Pine Street shopping center;
- Downtown redevelopment timeline;
- Grant documents, to be provided to Vice Mayor Olem; and
- Adding the budget review and code of ethics to the March 19 work session.

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ADJOURNMENT

There being no further business, the meeting adjourned at 9:48 p.m.



Lisa C. Merkel
Mayor



Amina Ait-Bella
Legislative Assistant



Minutes approved by Town Council: April 23, 2019.

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NOTE:

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