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HERNDON TOWN COUNCIL
Tuesday
March 26, 2019

The Town Council met in public session on Tuesday, March 26, 2019, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Jennifer K. Baker; Cesar del Aguila; Pradip Dhakal; Signe Friedrichs; and Bill McKenna.

Others present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Page Kalapasev, Director of Information Technology; Elizabeth Gilleran, Director of Community Development; Bryce Perry, Deputy Director of Community Development; Cindy Roeder, Director of Parks & Recreation; Tammy Chastain and John Irish, Deputy Directors of Public Works; David Stromberg, Zoning Administrator; Dennis Holste, Economic Development Manager; and Margie C. Tacci, Deputy Town Clerk.

Mayor Merkel called the meeting to order at 7:00 p.m., all members present, and with Mayor Merkel presiding.

Mayor Merkel led the audience in the Pledge of Allegiance to the Flag of the United States of America.

PRESENTATIONS

3. Proclamation, to recognize "Vietnam Veterans Day," March 29, 2019.

Councilmember del Aguila read the proclamation recognizing "Vietnam Veterans Day" into the record.

Following comments from the Council, Mayor Merkel expressed her appreciation to Jay Hadlock for recommending that the annual proclamation include language to "encourage the display of the flag of the United States of America."

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Michael J. Cutler, representing the American Legion Post 184, provided brief comments and expressed appreciation for recognition.

The proclamation was presented to Mr. Hadlock, members of the American Legion Wayne M. Kidwell Post 184 and members of the audience who have served or who currently serving in the armed forces.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
VIETNAM VETERANS DAY
MARCH 29, 2019**

The Vietnam War began on January 12, 1962 with "Operation Chopper" near Saigon and the last American troops left Vietnam on March 29, 1973. Through more than a decade of difficult conflict, the dedication and service of our men and women in uniform stood true. These brave patriots faced the line of fire; cast themselves into harm's way to save a friend; and fought hour after hour, day after day, to preserve the liberties we hold dear. The Vietnam War is a story of service members from different backgrounds, races, and creeds ~ from all across the country ~ who came together to complete a daunting mission and to serve the country they loved. During this conflict, more than 58,000 brave soldiers laid down their lives in service to our nation.

Eleven years of combat left an imprint on a generation. Thousands of soldiers returned home bearing battle wounds; however, still more were burdened by the invisible wounds of post-traumatic stress; Agent Orange; and memories that would never fade. Yet, in one of the war's most profound tragedies, many of these men and women came home to be shunned or neglected, to face treatment unbecoming their courage and a welcome unworthy of their example. This must never happen again.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, proclaim March 29, 2019, as **Vietnam Veterans Day** in the Town of Herndon; pay tribute to the fallen, the missing, the wounded, the millions who served, and those who anxiously awaited their return; and reaffirm one of our most fundamental obligations ~ to show all who have worn the uniform of the United States the respect and dignity they deserve.

Further, the Mayor and the Town Council of the Town of Herndon, Virginia, call on all citizens to observe **Vietnam Veterans Day** with appropriate programs, ceremonies, and activities, and encourage the display of the flag of the United States of America ~ to honor our nation's courageous veterans.

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4. **Proclamation, to recognize the 40th Anniversary of the Herndon Community Center, March 25, 2019.**

Councilmember McKenna read the proclamation recognizing the “40th Anniversary of the Herndon Community Center” into the record.

Following comments from the Council, Cindy Roeder, Director of Parks and Recreation, provided brief comments and expressed appreciation for recognition.

The proclamation was presented to Ms. Roeder and staff from the Department of Parks and Recreation.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
40TH ANNIVERSARY
THE HERNDON COMMUNITY CENTER
MARCH 25, 2019**

The Mayor and Town Council of the Town of Herndon, Virginia, hereby honor and celebrate the **40th Anniversary of the Herndon Community Center**; highlight the flagship facility for the Town of Herndon’s Department of Parks and Recreation, which opened in 1979; express our appreciation to the staff and volunteers at the Herndon Community Center ~ who maintain this community facility, provide outstanding customer service seven days a week, produce programs for all ages, encourage outdoor activity, educate citizens on behaviors and practices that support a healthy lifestyle, and collaborate with community groups to enhance and provide recreation programs, events and services at the Herndon Community Center ~ which bring all citizens together and generate a sense of community, preserve our town’s heritage and sense of place, and enhance our quality of life.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby congratulate the Department of Parks and Recreation ~ a nationally-accredited comprehensive parks and recreation system ~ on 40 years of excellence; and promote the Herndon Community Center’s diverse and accessible amenities and programs, which fulfill the physical, psychological and social needs of our entire community, helping to promote overall wellness and a healthier Herndon.

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5. **Proclamation, to recognize “National Volunteer Week,” April 7 – April 13, 2019.**

Councilmember Friedrichs read the proclamation recognizing “National Volunteer Week” into the record.

Following comments from the Council, Jimmy Cirrito, Jimmy’s Old Town Tavern, 697 Spring Street, a past Distinguished Corporate Service Award recipient, expressed his appreciation to Council for celebrating and recognizing the hard work of many volunteers in the community.

Cindy Roeder, Director of Parks and Recreation provided brief comments and expressed appreciation for recognition.

The proclamation was presented to Ms. Roeder and staff from the Department of Parks and Recreation, and Mr. Cirrito.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
NATIONAL VOLUNTEER WEEK
APRIL 7–APRIL 13, 2019**

President Richard Nixon established **National Volunteer Week** by executive order in 1974 as a way to recognize and celebrate the efforts of volunteers. Now in its 45th year, **National Volunteer Week** has grown exponentially, with thousands of volunteer projects and special events scheduled throughout the country. Together with the theme ~ Celebrate Service ~ **National Volunteer Week** aims to inspire, recognize and encourage citizens to join together and seek out creative ways to serve their communities. During this important week, we celebrate the impact of volunteer service and the power of changemakers to come together to tackle tough challenges, and build stronger, more vibrant communities.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim the week of April 7 through April 13, 2019, as **National Volunteer Week** in the Town of Herndon; and promote the opportunity to honor the many volunteers who engage in the Herndon community ~ selflessly dedicating themselves to the service of helping others.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby encourage all individuals to take action by supporting volunteer

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programs that benefit Herndon residents of all ages, including the fields of health, history, recreation, safety, social services, sports, the arts, and the environment.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, are keenly aware of and appreciate the dedication and contributions that Herndon's many volunteers ~ past and present ~ make toward improving our quality of life and making Herndon a special place to live, work and recreate; and for the 35th consecutive year, the town looks forward to honoring Herndon's outstanding and distinguished individual and corporate volunteers at the Mayor's Volunteer Appreciation Reception on Sunday, April 7, 2019.

6. Proclamation, to recognize "Local Government Education Week," April 1 – April 7, 2019.

Councilmember Dhakal read the proclamation recognizing "Local Government Education Week" into the record.

Following comments from the Council, William H. Ashton II, Town Manager, provided brief comments and expressed appreciation for the recognition.

The proclamation was presented to Mr. Ashton and town staff.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
LOCAL GOVERNMENT EDUCATION WEEK
APRIL 1 - APRIL 7, 2019**

On February 29, 2012, the Virginia General Assembly designated the first week of April as **Local Government Education Week** throughout the Commonwealth of Virginia. This week was selected because on April 2, 1908, the Council-Manager form of government was created in the City of Staunton, Virginia. During **Local Government Education Week**, municipalities throughout the Commonwealth are recognized for the valuable services provided to the residents and communities they serve.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, proclaim the week of April 1 – April 7, 2019, as **Local Government Education Week** in the Town of Herndon; express appreciation to the town staff for the vital role they play in educating our community through initiatives, such as ~ youth and citizen police academies; National Night Out; participation in local school activities; providing internship opportunities to students; promoting career opportunities at the town; safety, building and

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home maintenance workshops; enforcement of state and local laws; and community meetings on matters of importance to our citizens.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, express gratitude to the town staff for their dedication to our residents; recognize that citizen services ~ including law enforcement, public health and safety, recreation, and educating local children ~ are best delivered at the local level; and encourage increased civic education and engagement to strengthen our sense of community throughout Herndon, both during **Local Government Education Week** and throughout the year.

7. **Proclamation, to recognize "Earth Day/Arbor Day," March 31, 2019.**

Vice Mayor Olem read the proclamation recognizing "Earth Day/Arbor Day" into the record.

Following comments from the Council, John Dudzinsky, the town's Community Forester, expressed appreciation for recognition. He gifted each Councilmember with a hat. He introduced James McGlone Ph.D., Urban Forest Conservationist, Virginia Department of Forestry, NOVA Area, Central Region.

Mr. McGlone stated that he has been working with the town for 30 years ago and he expressed his appreciation to the town for its recognition over the years for trees. He stated that the town has the most environmentally friendly weed ordinance in the Northern Virginia planning area. He presented a plaque naming Herndon a "Tree City USA" by the Arbor Day Foundation for the 30th year in a row.

The proclamation was presented to Mr. Dudzinsky; Mr. McGlone; Carol Hadlock, President, and members of Friends of Runnymede Park; members of the Herndon Environmental Network; Cindy Roeder, Director, and staff from the Department of Parks and Recreation.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
EARTH DAY/ARBOR DAY
MARCH 31, 2019**

Celebrated each year since 1970, when likeminded groups of Americans brought environmental protection to the forefront, "Earth Day" supports environmental programs, rekindles public commitment, and builds community activism. This year's theme, "Protect Our Species," highlights the issue of protecting threatened and endangered species ~ emphasizing the

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value of all living things and their unique roles in the earth's ecosystems. "Arbor Day" started in 1872, when J. Sterling Morton called on farmers and homesteaders to replenish the tree population. By observing "Arbor Day," we emphasize the importance of beautifying our town through landscaping and trees, as we serve as the trustees for future generations.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim March 31, 2019, as **Earth Day/Arbor Day** in the Town of Herndon; encourage community enhancement projects; and recognize all the dedicated volunteers that helped with tree and shrub planting, litter cleanup, and other environmental work efforts; and highlight that the town was designated a "Tree City USA" by the Arbor Day Foundation for the 30th year in a row.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby encourage all residents to participate in **Earth Day/Arbor Day** activities all year long, and especially on the town's official Earth Day/Arbor Day on Sunday, March 31.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby encourage all individuals, businesses, civic and service associations, to recycle, celebrate nature, and support efforts promoting awareness of the value of trees and our environment.

8. COMMENTS FROM THE TOWN MANAGER

William H. Ashton II, Town Manager, stated that at the beginning of the broadcast there was a high-pitched feedback for viewers. He stated HCTV was working to resolve the issue with the audio.

The Town Manager provided an updated on the Comstock redevelopment project. He stated that Comstock was on its fourth submission of comments. The town and Comstock were working together on the transitional parking plan.

9. COMMENTS FROM THE TOWN COUNCIL

Councilmember McKenna: Stated that Friday, March 29, would be the one-year anniversary of Councilmember Jeff Davidson's car crash. Councilmember Davidson had passed away his injuries on April 7, 2018. He stated that he missed Councilmember Davidson's point of view.

Councilmember Friedrichs: Stated that she is the town's appointee to the Fairfax County Economic Development Advisory Commission. At the most recent

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meeting, a Town of Vienna Councilmember commented on the Town of Herndon's updates to the Code of Conduct. A news article had misstated that the Town of Vienna was updating their code. She stated that she has posted the Town of Herndon's current Code of Conduct on her Facebook page.

Councilmember Friedrichs stated that Rob Stalzer retired as the Deputy County Executive for Fairfax County, who previously served as Herndon's Town Manager from 1988-2000. She stated the County appointed Rachel O'Dwyer Flynn as Deputy County Executive, to replace Mr. Stalzer, who is now city manager for the City of Fairfax.

Councilmember Friedrichs stated that the Commission is also working to benchmark economic successes. This includes access to the arts, of which Herndon ranks highly.

Councilmember del Aguila: Echoed Councilmember Friedrichs' comments about the Code of Conduct. He stated that he hoped Council would come to a conclusion on that shortly.

Councilmember del Aguila stated that work sessions are recorded but there is not complete transparency in terms of providing video, which would show who is speaking. He stated that the Council will keep working to make everything transparent.

Councilmember Baker: Stated that this Friday, March 29, marks five weeks until the start of Friday Night Live!

Councilmember Baker stated that she is looking forward to this Saturday evening, March 30, when members of the Council would attend the annual Herndon Police awards.

Councilmember Baker stated that on Sunday, March 31, Barbara Glakas scheduled a book signing at the Herndon Historic Depot museum.

Councilmember Baker stated that she would use her comments to discuss the budget, since it was not on the agenda. She stated that she hoped citizens have noted that the town may potentially raise the meals tax by 1.5 percent. She encouraged citizens to provide comments. She stated that the town also is allowed to provide donations for non-profit organizations. She stated that the town's investment has grown dramatically and that she has been focusing on that. She stated that last year, 14 organizations applied for funding and only five received donations from the town. Two of those organizations – NextStop Theatre and ArtSpace Herndon – have received ten times more than other

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organizations that have requested funding from the town. She stated that these are important organizations to the community, but she wanted to evaluate how the town allocates money in its budget. Councilmember Baker stated that the town's donations to NextStop Theatre and ArtSpace Herndon is in addition to other resources that the town provides. She said that stated the amount requested has increased by each organization. This year, Next Stop has requested \$60K (26% increase on what we offered last year) and ArtsHerndon has requested \$75K (58% increase). Then, the chair of Arts sent an email asking for \$150K (216% increase). She stated that she understands that these numbers may be small in the overall scheme of the budget, but she wants the town and citizens to consider what is important in the community. She stated these are large investments to two organizations in particular and encouraged others to consider this.

Councilmember Dhakal: Stated that he attended the Dulles Regional Chamber of Commerce "Innovate" conference, and a former US Department of Transportation Secretary was there. He stated that Herndon is moving toward becoming a high technology place.

Councilmember Dhakal stated that he attended a meeting on affordable housing at the Baptist Church in Vienna. He stated that with the increase in IT jobs and increasing housing prices he wanted to see how Fairfax County and the Commonwealth of Virginia was addressing that.

Councilmember Dhakal stated that he attended the Herndon Chamber of Commerce Committee meeting with keynote speaker State Senator Jennifer Boysko, who provided updates on the state budget, including increases to the school systems such as a five percent raise to teachers' salaries.

Councilmember Dhakal stated that he also attended the Dulles Regional Chamber of Commerce Metro Monday which provided updates on the Silver Line. He stated that it is 92 percent complete, and the Herndon station is 95 percent complete.

Councilmember Dhakal stated that he concurred with other councilmembers' and encouraged citizens to provide input on the budget.

Vice Mayor Olem: Stated that Monday, April 1, is April Fools' Day.

Vice Mayor Olem echoed the Town Manager's comment about local government and stated that citizens may come and speak to the councilmembers. She stated that she is available outside of the town meetings, and she encouraged citizens to contact her.

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Vice Mayor Olem stated that since it was brought up about the non-profits and donations from the town, since she had moved here almost 30 years ago she has been impressed with the organizations that receive town donations and what they've provided in the community. She stated that if people want to scrutinize \$100,000 out of the nearly \$60 million budget, to look at Parks and Recreation for previous examples of cutting parts of the budget that don't turn a profit for the town but may provide other significant value. She stated that people should consider what they really do and do not want of the budget.

Mayor Merkel: Stated that she wanted to follow up on the comments about the ethics policy. She stated that there was a very robust discussion at the last work session that was available for the public to listen to. She stated that it would likely be on the agenda in April.

Mayor Merkel stated that she was looking forward to Saturday evening, March 30, to honor the Herndon Police Department. She stated her appreciation for the men and women of the department and to the Chief for their hard work. She stated she looked forward to celebrating them.

Mayor Merkel thanked her colleagues for their kindness when she had to leave the March 19 work session early because of a family emergency.

Mayor Merkel echoed Councilmember McKenna's comment about Councilmember Davidson. She encouraged everyone to keep his family, friends, and his significant other in their thoughts.

Mayor Merkel stated that budget discussions have started, and Council has received many comments. She invited comments from the audience.

10. COMMENTS FROM THE AUDIENCE

The following individuals came forward to provide comments:

- Barbara Owsley, 2101 High Court Lane, Unit 101, Herndon, stated that she spoke with the Town Manager over the phone on Friday, March 22. She stated that she wanted to clarify her request, which was not to address her issue in particular regarding the additional rescue dogs, but for Council to consider adding zoning regulations of how many animals per square foot a resident may have in an apartment or condo. She stated that the town should be proactive rather than reactive about this matter.

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- Barbara Glakas, 935 Barton Oaks Place, Herndon, echoed comments about Arbor Day and the history of trees in the town. She stated that one of the first ordinances of the town made it illegal to damage trees. She expressed her appreciation to Parks and Recreation staff for their hard work and congratulated them on the 40th anniversary of the Herndon Community Center. Ms. Glakas provided comments on the proposed Parks and Recreation fee schedule, which was listed on the agenda as a General Item. She stated that she supported the increase in fees, but her concerns were about how the fees were being raised. She stated that the town resident and senior fees were being raised disproportionately when compared to non-resident fees. She stated that the agenda item only noted the proposed increases, whereas the March 19 work session agenda showed the current fees and the proposed increases. She stated that when compared, many non-resident fees are “going down” while resident fees are increasing. She stated that of the 27 proposed fee changes, there were 13 increased fees to residents whereas non-resident fees remained the same or were reduced. She stated that a town resident should always be prioritized over non-residents. She stated that senior fees increased more than adult fees. She asked Parks and Recreation staff to reconsider their proposed fee changes.
- Walt Shorter, Four Seasons, Early Fall Court, Herndon, thanked the Council for hosting the Community Roundtable on Saturday, March 2. He stated that he thought it was an enormous step for the Council and the comments he has heard have been very positive.
- Bessie Denton, 496 Virginia Avenue, Herndon, suggested that the Council consider a bench in memory of former Councilmember Jeff Davidson.
- Ann Vayda, 631 Oak Street, Herndon, provided comments on town donations. She stated she spent a weekend in Colonial Williamsburg at a venue that was funded by private donations. She stated that great things are possible when government focuses on its narrow scope and allows the private sector “to do what it does best.” She stated that she understood that for safety reasons, the Chief of Police urged the Council to move the meetings out of the conference room, which she supported. She stated that from her understanding, at the previous public hearing Council had tasked staff to post the current Code of Conduct online. She stated that as of 6pm this evening, only Councilmember Friedrichs had posted the Town Code of Ethics on her Facebook page, not the Code of Conduct. She stated that regarding the first bullet point of the current code, the term “best” is not defined and that the consequences are not defined. She provided examples of clear and unclear violations of ethics. She stated that it does

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not address the “ever-present” social media use. She stated that the town is no longer a dairy-farming community, but a tech-savvy portion of the Dulles corridor, and that the code needed to reflect that.

PUBLIC HEARINGS

11. Ordinance 19-O-06, to grant a first franchise amendment to Level 3 Communications of Virginia, Inc.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the March 8 and March 15, 2019 issues.

Mayor Merkel opened the public hearing and announced that the town would follow the bid process. The proposed ordinance would require a roll call vote pursuant to the state code.

Mayor Merkel stated that the town received one bid from Level 3 Communications of Virginia, Inc., which is entered into the record and on file in the Town Clerk’s office.

Mayor Merkel asked Tammy Chastain, Deputy Director of Public Works, whether staff had received additional bids.

Hearing none, Mayor Merkel closed the bidding process.

Tammy Chastain, Deputy Director of Public Works, presented the staff report, which is on file in the Town Clerk’s office. The First Amendment to the franchise agreement between Level 3 Communications of Virginia, Inc. and the Town of Herndon dated August 4, 2015, will permit an increase of three conduits lines within a route expansion of approximately 68 linear feet.

The proposed route expansion will be located from the inner loop of the Herndon Parkway to the right-of-way line at 365 Herndon Parkway, which is reflected in green on Exhibit A attached to the staff report. Exhibit A dated March 26, 2019 replaces any previous exhibit(s). Staff recommends approval of the proposed ordinance, as presented.

There were no comments from Council or the applicant’s agent.

Following the public hearing (there were no comments from the audience), Councilmember Baker moved approval of Ordinance 19-O-06, as presented. Councilmember McKenna seconded the motion.

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There was no discussion on the motion.

The question was called on the motion, which carried by a ROLL CALL vote of 7-0. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-06, to grant a first franchise amendment to Level 3 Communications of Virginia, Inc., for a route expansion for three conduit lines.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that:

1. The Town Council approves this First Amendment to the Franchise Agreement dated August 4, 2015.
2. This instrument allows for a route expansion of 68 linear feet for three conduit lines from the inner loop of the Herndon Parkway to the Right of way line at 365 Herndon Parkway (As reflected on Exhibit A).
3. Exhibit A dated March 26, 2019, attached hereto, replaces any previous exhibit(s).
4. In all other respects, the original franchise remains in effect.
5. The Mayor is authorized to sign and deliver the franchise and any ancillary instruments necessary to effectuate the franchise.
6. This ordinance shall be in effect on and after the date of its adoption.

[Note: Attached for reference is the signed first franchise amendment and Exhibit A dated March 26, 2019.]

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FIRST FRANCHISE AMENDMENT

THIS FIRST AMENDMENT dated for identification this 26th day of March 2019 is hereby made to the Franchise Agreement dated August 4th 2015, by and between the TOWN OF HERNDON, a Virginia municipal corporation (the "Town") and LEVEL 3 COMMUNICATIONS OF VIRGINIA, INC, a Virginia corporation, on behalf of itself and its Affiliates who are parties to the Affiliate Franchise Agreements ("Franchisee").

WHEREAS, WilTel Communications of Virginia, Inc. ("WilTel") entered a Franchise Agreement with the Town dated August 13, 2004; and

WHEREAS, Looking Glass Networks of Virginia, Inc. ("LGN") entered into a Franchise Agreement with the Town dated December 1, 2005; and

WHEREAS, TW Telecom of Virginia LLC (formerly known as Time Warner Telecom of Virginia, LLC, formerly known as Xspedius Management Co. of Virginia, LLC) ("TW") dated November 10, 2003, as amended on October 22, 2007 and April 23, 2013; and

WHEREAS, Level 3 Communications, LLC ("Level 3") entered into a Franchise Agreement with the Town dated March 25, 2005; and

WHEREAS, Level 3 Communications of Virginia, Inc consolidated affiliates, WilTel, LGN, and TW and respective agreements with the town in agreement dated August 4, 2015, as approved by Ordinance 15-O-27, expiring on August 4, 2025.

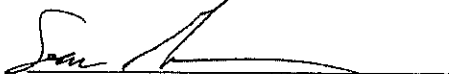
NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Subject to all the terms and conditions contained in the Agreement, the route is hereby amended to reflect a route expansion of 68 linear feet for 3 conduit lines. (As reflected in Exhibit A)
2. Exhibit A dated March 26, 2019, attached hereto, replaces any previous exhibit(s).
3. Except as specifically amended or modified herein, the terms and conditions of the Agreement will remain in full force and effect through the term.

[Signatures on following page]

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LEVEL 3 COMMUNICATIONS OF VIRGINIA, INC

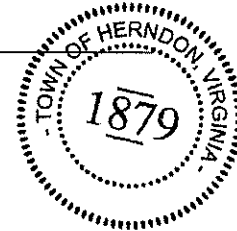
By: 

Sean Gerson
Senior Manager

TOWN OF HERNDON, VIRGINIA

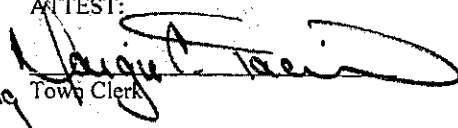
By: 

Lisa C. Merkel
Mayor

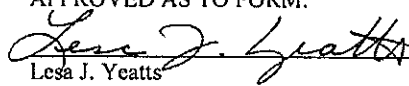


ATTEST:

Arling


Town Clerk

APPROVED AS TO FORM:


Lisa J. Yeatts
Town Attorney

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12. **Ordinance 19-O-07, to consider Development Plan DP #17-01, for a Herndon Transit-Oriented Core Development Plan to allow a mixed-use development at 555 Herndon Parkway. Owner: 555 Herndon LLC; Representative: Frank J. Poli, Senior Vice President, Penzance Management, LLC; Agent: Kenneth W. Wire, Esq. Wire Gill, LLP.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the March 8 and March 15, 2019 issues.

Mayor Merkel opened the public hearing and stated that comments received on this item have been entered into the record. She stated that an updated PowerPoint was submitted late that afternoon and would be updated in Granicus the following morning. She recognized Bryce Perry, Deputy Director of Community Development, for the staff report.

Mr. Perry presented the staff report and PowerPoint, which are on file in the Town Clerk's office. This application is for a Herndon Transit-Oriented Core (HTOC) Development Plan with proffered conditions to allow a mixed-use development up to a 4.3 FAR ratio. The parcel contains 4.3439 acres. The plan proposes a three-phase development with two tower buildings and one mid-rise building collectively comprised of residential, office and retail use. He described the location of the development.

He stated that this is one of nine properties within the HTOC, the first to be seeking a development plan. The area was part of a master plan as part of the Metrorail area study and the HTOC plan. He stated that when reviewing plans, staff first looked at the regulation, under the zoning ordinance and specifically Section 78-50.8, which allows up to 4.3 FAR for a development plan and specific standards. Development plans are guided by the 2030 Comprehensive Plan. He stated that the review of HTOC plan follows a specific process, which he outlined.

The Planning Commission held public hearings on this application on January 28 and February 25, 2019. At its February 25 public hearing, the Planning Commissioner recommended approval of DP #17-01, with two amendments and additional guidance.

Since the Council's March 19 work session, the applicant has submitted revised application materials to address the remaining items identified by staff that required information and clarification. He outlined a memorandum dated March 21, which is on file in the Town Clerk's office. The Architectural Review Board reviewed the proposed application at its February work session, and the project complied with the applicable design guidelines.

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Mr. Perry reviewed the design of the project, including the individual building designs. He reviewed the timeline of the project, stating that the project timeline will depend on market demands.

Mr. Perry stated that the zoning ordinance requires tower separation of 65 feet, and the applicant is requesting a modification to reduce to 55 feet in two parts of the design. Staff supports the request.

The revised signed proffer statement includes language addressing the design of the pedestrian passages. The applicant will continue to work with staff to ensure best possible design. Staff believes the new language will help ensure that the passages are designed to create a comfortable and inviting environment for pedestrians.

A revised Traffic Impact Analysis and revised Transportation Demand Management Plan were also submitted. These documents address the additional information and request for clarification by staff and the town's traffic consultant. Additional modeling was conducted in the Traffic Impact Analysis to refine some vehicle queuing calculations. Additional information included in the Transportation Demand Management Plan is program outreach, awareness and refined process for issuing reports to the town on the program progress.

Staff recommends approval of the DP #17-01, as presented.

Councilmember Friedrichs stated that a citizen wrote in about retail parking. She stated that there were only 17 parking spaces listed in the design plan.

Mr. Perry stated that the parking ratios offered are conceptual and could change throughout the process. He stated that it would be something that the applicant could address.

Councilmember Dhakal asked about the details of the parking spaces. He asked if there would be visitor or public parking.

Mr. Perry stated that the plan does not currently describe that level of detail. He stated that the assumption is that there will be dedicated visitor parking for residential and businesses. He stated that there will be no public parking offered in regard to Metro parking.

Councilmember Baker asked if the applicant was proposing the maximum square footage.

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Mr. Perry stated that square footage was not not the maximums, and that depending on the use there were no maximums set.

Councilmember Baker asked if the market changes, would the applicant need to return to the Council to submit a new plan.

Mr. Perry confirmed that the applicant would need to return to the Council and amend the development plan if the market changes demanded more than what the proffers currently allow for. He stated that the residential number was the maximum number that the applicant could achieve.

Councilmember Baker stated that she was trying to figure out the flexibility of the plan in regard to the proffer.

Mr. Perry reviewed the development plan and stated that there is no cap on office or retail space in the plan.

Councilmember Baker asked if there was any reference to bicycle parking.

Mr. Perry stated that it is a zoning ordinance requirement. He stated that the applicant would also provide public bicycle racks.

Councilmember Baker asked if there was a ratio in the zoning ordinance for residential square footage to the number of bicycle racks.

Mr. Perry stated that he would have to look that up.

Mayor Merkel asked if that level of detail was available at this point in the process.

Mr. Perry stated that staff did ask that the applicant show bicycle racks in conceptual locations, and that it would be held to the zoning ordinance. In addition to the off-street cycle track the applicant would be providing on-street bicycle facilities.

Councilmember Baker asked which level of LEED certification the applicant would be aiming for.

Mr. Perry stated that the proffers mention LEED certification which is the base level for residential buildings, and LEED Silver for the office buildings.

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Councilmember del Aguila clarified that the square footage for retail, residential, and office had not changed from the March 19 work session and asked that the applicant speak to the products offered for the area.

Mayor Merkel asked for clarification that there is a maximum of square footage for residential, but flexibility for office and retail.

Mr. Perry confirmed. He stated that staff wanted to cap residential to achieve a balance within the development community.

Mayor Merkel invited forward Ken Wire, with Wire Gill, the applicant's agent.

Mr. Wire, representing the applicant, presented a PowerPoint, which is on file in the Town Clerk's office.

Mr. Wire reviewed the square footage details and the site plan. He reviewed access to the Metro station from the site and the history of the land of the proposed development. He stated that it was not a final site plan, but rather a guideline for the town to understand what the applicant can deliver and for the applicant to understand density rights and parameters. Buildings respond to each other in regard to ratio of square footage.

Mr. Wire further discussed the design of the proposal. He reviewed square footage, retail opportunities, and flexibility of the design. He further discussed the requirement for the unique Herndon identity. He stated that floor area is a cap, but parking space is a minimum, so flexibility may develop as the site plan develops. The design elements will reflect the pedestrian developments that Herndon has committed to in the past.

Mr. Wire reviewed the entry and exit passageways, the design elements of pedestrian and vehicle streetscapes, and the market and cost goals. He stated that after several years of work, they were excited to potentially be the first to open doors in the HTOC area.

Mayor Merkel stated that she appreciated the clarity of the presentation.

Vice Mayor Olem asked for clarification for the percentages of office, retail, and residential ratios.

Mr. Wire stated that there was a minimum of office space of 200,000 square footage.

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Mr. DeVonte clarified that the percentage of residential was capped at 60 percent, which he stated could potential decrease if the office space increased, and retail would be between one and two percent. He stated that the right kind of retail would be necessary for the project, and if they can put additional retail in the space they would try.

Vice Mayor Olem asked for further clarification.

In response to an inquiry from Vice Mayor Olem, the applicant's representatives discussed LEED certification standards.

There was discussion about water and sewer contributions.

Councilmember del Aguila stated that for the pavers, the town salts the road during the winter and suggested to the applicants to observe materials previously used around town. He stated that there were many local artists that he would like to see contribute to the project.

Councilmember McKenna asked if there would be ongoing traffic studies.

Mr. Wire stated that a traffic study had been conducted in 2012 and updated recently. He described the location and details of traffic lights around the project.

The public hearing was held, and the following individual(s) provided testimony:

- Barbara Glakas, 935 Barton Oaks Place, Herndon, encouraged the Council to wait to vote on the item;
- Connie Hutchinson, 1019 Van Buren Street, Herndon, provided comments regarding the location in relation to the Dulles airport; and
- Pat Hermes, 902 Hermes Court, Herndon, provided comments about water and sewer line concerns, and concerns about existing residents paying for increased taxes.

In response to concerns from Ms. Hutchinson, Mr. Wire stated that the taller building is intentionally between the airport. He reviewed guidelines with the Federal Aviation Administration. He responded to Mr. Hermes concerns about tax revenue and the positive net return for mixed-use developments.

Mr. Ashton stated that the water and sewer plan is in the CIP, which is a separate fund that is self-funding. He described the planned projects in the CIP.

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(public hearing)**

Following the public hearing, Vice Mayor Olem moved to **CONTINUE** Ordinance 19-O-06 to the Council's April 9 public hearing, to allow additional review by the Council and staff. Seconded by Councilmember Friedrichs.

Vice Mayor Olem stated that she wanted more public input. She stated that she was looking forward to this project but wanted to give more opportunity for the community to comment.

Councilmember Friedrichs stated that she found it a very appealing development, but she wanted more time to review.

Councilmember Baker stated that the new presentation was very helpful. She stated that quality of work was excellent. She stated that she had been excited to vote on the item tonight but agreed with Council and citizen concerns.

Councilmember Dhakal echoed Councilmember Baker's comments. He stated that he also would like extra time to review.

Councilmember del Aguila thanked the applicant for their presentation.

Councilmember McKenna stated that he was in favor of this. He encouraged the audience to review the Planning Commission meeting. He stated that he went to the community meetings and encouraged the audience to understand the context.

Mayor Merkel stated that she understands better what the project would look like with the presentation.

The question was called on the motion, which carried by a 7-0 vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

13. **Ordinance 19-O-08, to amend Chapter 63 (SOLID WASTE), Sections 63-2, 63-4, 63-5, 63-8, and 63-9, regarding definitions, general requirements and responsibilities of owners, residential collection times and placement, schedule of fees for recyclables, special collection, and violations.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the March 8 and March 15, 2019 issues.

Mayor Merkel opened the public hearing and recognized Tammy Chastain, Deputy Director of Public Works, for the staff report.

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(public hearing)**

Ms. Chastain presented the staff report and PowerPoint, which are on file in the Town Clerk's office. The proposed ordinance recommends fee and procedure changes, and clarifications to definitions regarding requirements and restrictions relating to solid waste, including recycling.

She briefly outlined major changes, including:

- A dedicated website with a searchable, interactive map;
- A revised collection time from 7:00 a.m. to 6:00 a.m. during summer hours;
- A revised definition for automated/semi-automated collection carts/containers;
- A definition of a Material Recovery Facility (MRF) and transfer station;
- The requirements for residential storage and maintenance;
- The use of the town's Streetscape Manual for guidance on style, number, and placement of containers for commercial establishments;
- A clarification of maximum weight restrictions for special collections;
- The removal of rental containers and roll-offs provided for community cleanup events; and
- Additional increases to Sec. 63-8 - Schedule of fees.

Ms. Chastain reviewed the history of recycling associated fees in the town. The recycling fee was last increased in 2010 from \$2.50 per quarter to \$4.00 per quarter. Due to the nature of market fluctuations in the recycling industry, the town no longer received as high of a return on the tonnage of recyclable materials. The current fee offsets 20 percent of the costs of recycling, and the proposed fee would offset 40 percent. She compared the town to other nearby jurisdictions. Staff recommends approval of the proposed ordinance, as presented.

Vice Mayor Olem asked about disposal of yard debris.

Ms. Chastain stated that it is picked up on trash collection days and sent to a composting facility.

There were no comments from the audience.

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(public hearing)**

Following the public hearing, Councilmember McKenna moved approval of Ordinance 19-O-08, as presented. Vice Mayor Olem seconded the motion.

Following brief comments by Council, the question was called on the motion, which carried by a 7-0 vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-08, to amend Chapter 63 (SOLID WASTE), Sections 63-2, 63-4, 63-5, 63-8, and 63-9 of the Code of the Town of Herndon, regarding definitions, general requirements and responsibilities of owners, residential collection times and placement, schedule of fees for recyclables, special collection, and violations.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that:

1. The following sections of the Herndon Town Code (2000), as amended, is amended and re-ordained as follows:

Sec. 63-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ashes means residue resulting from the combustion of coal, wood, coke or other combustible materials, including residue from incineration of solid wastes.

Authorized agent means the director of public works or a person designated by the director of public works.

Automated collection route means the route for which the authorized agent or an authorized collector deems suitable to use an automated collection truck.

***Automated/semi-automated cart/container* means a container that is ANSI compliant and compatible with fully-automated truck arms and semi-automated lifters. The maximum allowable size shall be 96 gallons; the container shall be rugged with an attached lid and wheels for easier handling. The container has specific handling points for use with automated and semi-automated collections trucks.**

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Batteries means a device which, by electrochemical reaction, provides a type of power. For the definition in relation to this chapter, batteries shall fall into one of three categories: (1) alkaline, (2) automotive, and (3) other.

Brush/yard waste means grass cuttings, shrub clippings, weeds, leaves, tree limbs, tree trunks and stumps (dirt and rock removed).

Bulk MSW and bulk recyclable container means a sturdy, watertight, covered metal container which can only be emptied directly into a collection vehicle by mechanical means, as approved by the town.

~~*Cart* means a container that is compatible with ANSI compliant fully automated truck arms and semi-automated lifters. The maximum allowable size shall be 96 gallons; the container is rugged with an attached lid and wheels for easier handling. The container has specific handling points for use with automated and semi-automated collection trucks.~~

Collection route means the route an authorized collector follows to collect municipal solid waste and source-separated recyclable materials from customers.

Community cleanup event means an event hosted and managed by an association/organization for municipal solid waste (MSW) and recyclable collection.

Condominium means multifamily attached dwellings organized as condominiums or cooperatives.

Construction/demolition debris (CDD) means solid waste generated during construction, remodeling, repair, or demolition of pavements, houses, commercial buildings or any other structures. CDD includes, but is not limited to: lumber; wire; sheetrock; brick; shingles; glass; pipes; concrete; paving materials; metals; and plastics.

***Disposal site* means a facility at which municipal solid waste (MSW) is disposed**

Household hazardous waste (HHW) means discarded household products that contain corrosive, toxic, ignitable, or reactive ingredients, or are otherwise potentially harmful if released to the environment. Products that fall into this category include, but are not limited to certain paints, cleaners and pesticides. Latex paint is not considered HHW.

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Institutional places means cemeteries, community centers, convalescent homes, hospitals, libraries, museums, fine art centers, religious institutions, senior centers, social services, schools and similar community services (See also section 78-401.5)

***Material Recovery Facility (MRF)* means a facility where source-separated recyclables are either stored until large enough volumes are collected to be shipped to a buyer or processor, or they are processed to meet the specifications of recycling markets.**

Municipal solid waste (MSW), more commonly known as *refuse*, trash or garbage, excluding unacceptable materials as defined elsewhere, consists of everyday items used and then thrown away, such as product packaging and food scraps, coming from homes, schools, hospitals (non-infectious materials only), and businesses (non-industrial materials only).

Owner means the owner, lessee, occupant, person in control of the premises, or generator of municipal solid waste and/or recyclables and/or brush/yard waste, for whom the town provides municipal solid waste and/or single-stream recyclables and/or brush/yard waste collection service.

Person means an individual, partnership, firm, association, corporation or agent of any of these.

Rear loaded collection route means the route for which the authorized agent or an authorized collector deems suitable to use a rear loaded collection truck.

Recyclable material or *recyclables* means the following materials "capable of being diverted or reclaimed from the waste stream and prepared for further beneficial use through the recycling process" 9 VAC 20-140-20 renumbered 9 VAC 15-30-20.

- (1) Single-stream recyclables (single-stream recycling). **May include the following as determined by the MRF (Material Recovery Facility)**
 - a. Multi-material, **including that may include any of the following:** metal food and beverage containers, glass food and beverage containers, and type 1-7 plastic PETE and HDPE translucent bottles.

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- b. Newspapers, corrugated cardboard, magazines, catalogs, cereal & dry food boxes, telephone books, printer and copier paper, mail, or other materials prescribed by the authorized agent **or MRF**.
- (2) Ferrous metals/white goods including, but not limited to: stoves, refrigerators, washing machines, clothes dryers and hot water tanks.
- (3) Scrap metal means any metal object or portion of a metal object or an object containing a significant amount of metal, excluding appliances.
- (4) Brush/yard waste means tree limbs, tree trunks, stumps, grass cutting, shrub clippings, weeds and leaves.

Solid waste means non-liquid, non-soluble materials ranging from municipal solid waste (MSW) to industrial wastes that contain complex and sometimes hazardous substances. Solid waste also includes sewage sludge, agricultural refuse, demolition wastes, and mining residues. Technically, solid waste also refers to liquids and gases in containers.

Standard MSW or single-stream recycling or brush/yard waste container means a sturdy, durable metal or plastic container maintained in good physical condition, with a lid which is designed to be emptied directly into a collection vehicle by manual means (or mechanical means, as approved by the town). The size shall not exceed 65 gallons.

Transfer station means any MSW storage or collection facility at which MSW is transferred from collection vehicles to other vehicles or means of transportation for shipment to another site for permanent disposal.

(Ord. No. 16-O-05, § 1, 2-23-2016)

Sec. 63-4. – Disposal, generally.

- (4) *Recyclable material*. Recyclables specified by the authorized agent **or MRF** shall be separated prior to collection so as not to become mixed with other solid waste destined for sanitary disposal sites.

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Sec. 63-5. - Storage and maintenance.

- (a) *Generally.* It shall be unlawful for any person to store any solid waste or recyclables within the town, except as provided in this chapter. The provisions of this section shall apply to any land or premises where solid waste and/or recycling accumulates or is produced, be it residential, commercial, institutional or industrial, including vacant property.

It shall be unlawful for the owner of any single-family, duplex or townhouse residential unit, multiple-unit dwelling, commercial, institutional and industrial lands and buildings to permit the accumulation of solid waste and/or recyclable material upon such property in any manner which may cause or permit solid waste or recyclable material to be carried or deposited by the elements upon any street, sidewalk or other public place or upon any other private property.

- (1) Single-family, duplex or townhouse residential dwellings.
 - a. All MSW and single-stream recyclables shall be stored between collection days in approved container(s) or cart(s), such that the lids are properly fitted, **in the closed position**, with no overflow.
 - b. Brush/yard waste shall be stored in approved paper bags or container(s). Exception: bundled brush/yard waste, compost and stacked firewood. Loose leaves are only permitted during the **seasonal leaf pickup collection** program.
 - c. Owners shall be responsible for the care and protection of their approved containers or carts and for such solid waste and/or recyclables that may become spilled or scattered.
- (2) Multi-unit dwellings, commercial, institutional and industrial lands and buildings.
 - a. All bulk MSW and bulk recyclable containers shall be durable, in good physical condition, and tightly constructed **with operable lid(s)** so as to prevent leakage and unsanitary conditions.

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(b) *Responsibility of owners.*

- (1) Owners of each single-family, duplex or townhouse residential dwelling shall be responsible for the following:
 - a. All carts and containers shall be identified by address or unit number painted in contrasting letters and figures, at least two inches in height, approximately halfway between the bottom and top of the container. The identification on carts shall be placed on the handle side of the cart.
 - b. In rear loaded collection route areas as designated by the town, owners shall provide a sufficient number of approved containers for storage of MSW and single-stream recyclables to prevent overflow or obnoxious odor between times of collection and maintain the premises in accordance with the provisions of this chapter. The maximum number of containers shall be as specified in section 63-6(a)(1)gf.
 - c. In automated collection route areas designated by the town, owners shall use and maintain the carts that are provided by the town (one MSW and one single-stream recycling) for storage of MSW and recyclables to prevent overflow or obnoxious odor between times of collection and maintain the premises in accordance with the provisions of this chapter. Town provided carts are the property of the town and shall not be removed from the property to which provided. If additional carts are needed, they may be purchased from the town following receipt of a written request from the owner, at purchase cost with no markup. Additional carts shall not exceed the number specified in section 63-6(a)(1)gf.
 - d. Brush/yard waste shall be stored in approved paper bags or container(s). Exception: bundled brush/yard waste, compost and stacked firewood; loose leaves are only permitted during the **seasonal leaf pickup collection** program.
 - e. Segregate solid waste and recycling as prescribed by the authorized agent.
- (2) It shall be the joint and severable responsibility of the owner of each multiple-unit dwelling, commercial and industrial land or buildings that does not receive collection from the town's contracted service, to

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provide a sufficient number of approved containers for storage of MSW and recyclables to prevent overflow or obnoxious odor between times of collection, and maintain the premises in accordance with the provisions of this chapter.

- (3) The owners of all shopping centers or commercial establishments within the limits of the town are required to install, service and maintain MSW and single-stream recyclable containers at location pre-approved by the town within such shopping center or commercial establishments pursuant to the requirements of the town's zoning ordinance.
- (4) The owners of all shopping centers or commercial establishments within the limits of the town are required to install and maintain MSW and single-stream recycling containers on the edge of the pedestrian walkway area within such shopping center or commercial establishments. The containers shall be of a type, size and color, and placed at such location as may be required and approved by the authorized agent and clearly designated as receptacles of MSW and recycling. **The Town's Streetscape Manual should be used for guidance on style, number, and placement of containers.**
- (5) Each multiple-unit dwelling that receives collection from the town's contracted service, must maintain the designated collection sites between times of collection, and maintain the premises in accordance with the provisions of this chapter.

(Ord. No. 16-O-05, § 1, 2-23-2016)

Sec. 63-6. - Collection by town.

(a) *Residential.*

- (1) *Single-family, duplex or townhouse residential dwelling.* Curbside collection of MSW, single-stream recyclables, and brush/yard waste shall be collected no less than once a week from single-family, duplex or townhouse residential dwelling. It shall be collected more frequently if the authorized agent determines that more collections are necessary for the preservation of the public health. Collection days are determined by the town and if needed can be changed to maintain compliance with this chapter. The following requirements shall apply:

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- a. Place only approved MSW, single-stream recyclable containers/carts and brush/yard waste at the location(s) designated in subsection (2) below, ~~not early~~ **no earlier** than ~~24~~ **12** hours prior to the scheduled collection day, but no later than ~~7~~ **6:00** a.m. of the scheduled collection day and remove all containers/carts **before** 6:00 p.m. ~~ofn~~ ~~the following~~ day after the refuse/recycling has been collected.
- b. *Placement.*
 1. *Rear loaded collection:* All approved MSW, single-stream recyclable containers/carts and brush/yard waste containers shall be placed within ten feet of the curb-line, the edge of pavement where there is no curb or as designated by the authorized agent.
 2. *Automated collection:* All approved MSW, single-stream recyclable containers/carts and brush/yard waste containers shall be placed in the right-of-way, in a location easily accessible by an automated collection truck. ~~Exact~~ **Optimal** locations shall be determined by the authorized agent.
 3. MSW, single-stream recyclable containers/carts, automated carts and brush/yard waste shall be placed in a location where they do not block the flow of traffic.
 4. MSW, single stream recyclable containers/carts, automated carts and brush/yard waste shall not be placed on the sidewalks.
- c. *Reasonable accommodations collection:* The authorized agent, in consultation with any affected homeowners' association or affected citizen or citizens in a specific case may grant an exception to the requirement in this section in the case of physical limitations of the owner. The exception must address and accommodate physical limitations of the owner. If the authorized agent grants an exception, the owner shall place all approved MSW, single-stream recyclable containers/carts and brush/yard waste as set out in the written exception.
- d. Items requiring special collection for a fee (as defined in section 63-8) or collected during special collection events as

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designated by the town: Single-family, duplex or townhouse residential dwellings which receive curbside collection services from the town and multiple-unit (residential condominium) dwellings that receive collection from the town through a contractor and request special collection in writing may place at a location acceptable to the authorized agent the following items for collection:

1. Furniture; couches, chairs, mattresses, tables, etc., **with a corresponding weight not to exceed 100 pounds per item.**
 2. Large appliances; stoves, dishwashers, washing machines, clothes dryers, refrigerators, etc., **with a corresponding weight not to exceed 100 pounds per item.** (Doors which may be hazardous due to the potential for trapping a person inside shall be removed from all appliances prior to set out)
 3. Small amounts of scrap metal that contains no HHW ~~not to exceed 50 pounds~~; lawn mowers, car parts, bed frames, etc., **with a corresponding weight not to exceed 50 pounds per item.**
 4. Large CDD; toilets, sinks, cabinets, fencing, shingles, lumber, carpet, flooring, etc. that are not ~~listed~~ **listed** or deemed unacceptable, **with a corresponding weight not to exceed 100 pounds per item.**
 5. Tires; two per collection.
 6. Tree trunks and limbs with a diameter estimated to be greater than three inches, a length less than four foot, and a corresponding weight of less than 50 pounds.
- e. *Town-wide cleanup events.* The town, at its discretion, may provide pre-scheduled curbside collection of items from single-family, duplex or townhouse residential dwellings normally falling under the category of special collections.

~~The town, at its discretion, may provide pre-scheduled dumpsters and ancillary refuse cleanup supplies to civic, religious and non-profit groups at locations determined by the~~

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~~town. The town, at its discretion, may waive any and all associated costs and fees for this service.~~

- f. ~~Community cleanup events. The town will provide and collect, at the request of a homeowners' association, roll-off containers for community cleanup events. The location of the containers shall be determined by the town to allow for easy disposal and minimization of traffic impact. The containers provided shall be of 30 cubic yard capacity and an individual fee shall be charged per container, as listed in section 63-8. Items collected shall consist of one fo the following categories: acceptable MSW, single stream recycling, brush/yard waste, or bulk items and appliances (furniture or white goods). None of the aforementioned approved categories may be co-mingled: items shall be separated per container for each category of MSW or recyclables deposited into the containers.~~
- gf. Unless pre-approved in writing (property specific), the following shall be the maximum number of carts/containers allowed to be set out for MSW and single-stream recycling collection (excluding brush/yard waste), per collection. Any additional required collections shall be considered special collections, and shall be charged according to the fees in section 63-8.
 - 1. Properties which are part of the automated collection route shall have a maximum of two MSW carts/**containers meeting the requirements of this ordinance serviced** ~~collected~~-per collection of MSW and shall have a maximum of two single-stream recycling carts/**containers meeting the requirements of this ordinance serviced** ~~collected~~-per collection of single-stream recycling.
 - 2. Properties which are part of the rear loaded collection route shall have a maximum of four MSW containers meeting the requirements listed elsewhere in this ~~section~~ **ordinance serviced** ~~collected~~-per collection of MSW and shall have a maximum of five single-stream recycling containers meeting the requirements listed elsewhere in this ~~ordinance serviced section~~ **ordinance serviced** ~~collected~~-per collection of single-stream recycling.

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- hg. The maximum allowable loaded weight for rear loaded containers shall not exceed 50 pounds.
- ih. Brush/yard waste collection shall be unlimited, as long as it can be verified that the brush/yard waste originates only from the property from which it is collected. Brush/yard waste must be separated from MSW, single-stream recycling and CDD. Brush/yard waste can be placed in containers marked brush/yard waste, brush/yard waste paper bags that do not exceed 50 pounds or bundled, as appropriate. If items are bundled, the bundle cannot exceed four foot lengths, must be tied up with twine, must not exceed 50 pounds and material within the bundles must not exceed sizes below:

- (b) *Condominiums.* The town will collect MSW and single-stream recyclables once a week from these **Condominium Associations** desiring collection **only upon acceptance and approval by the Town of a written request for collection.** ~~by the town. A request for a second weekly pickup collections~~ will only be considered during the annual bid process for the multi-family solid waste contract. The maximum volume for the weekly collection by the town shall not exceed 0.5 cubic yard per unit. Condominiums whose MSW and single-stream recyclables are collected by the town shall use containers approved by the authorized agent.

(Ord. No. 16-O-05, § 1, 2-23-2016)

Sec. 63-8. - Schedule of fees.

- (a) *Fees.* The town council imposes the following fees on the owner, lessee, occupant, person in control of the premises, or the generator of the MSW or recyclables, as appropriate, for MSW and recyclables collected by the town.
- (b) *Miscellaneous fees.* The town council establishes and imposes the following fees:
 - (1) Recyclables (per quarter) ~~\$4.00~~ **8.00**

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This fee shall not be prorated or refundable and shall be payable with and under the same terms as water bill payments.

(2) *Special collection.*

- a. Bulk items, furniture, excessive volume of MSW, recyclables, white goods, and the like ~~\$35.00~~ **60.00** per each three cubic yards or portion thereof up to nine cubic yards, **and not exceeding weight limits set in Section 63-6 (a)**
- b. Bulk items, furniture, excessive volumes of MSW, recyclables, white goods, and the like in excess of nine cubic yards, **and not exceeding weight limits set in Section 63-6 (a)** may be collected at the sole discretion of the authorized agent. Upon receipt of a written request for a special collection, a written estimate will be provided.

(3) *Condominium association fees for bulk or multi items for special collection.* Fees will be assessed according to the special collection fee schedule in subsection (b) above.

~~(4) *Rental containers for associations and organizations.* Up to 30 cubic yard container rental for use by associations/organizations, as requested, to support community cleanup events: (per rental period, maximum of three days to allow for weekends) \$300.00~~

(Ord. No. 16-O-05, § 1, 2-23-2016)

Sec. 63-9. - Violations; fees and penalties.

- (c) *Violation fee* . The authorized agent on behalf of the town shall charge the person(s) responsible for a violation a fee as listed below.
 - (1) The authorized agent on behalf of the town shall charge the person(s) responsible for a violation a fee ~~\$35.00~~ **120.00** (each occurrence).

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- (2) In addition to the violation fee, a fee shall be charged for the removal and disposal of the violation as follows:

Bulk items, furniture, excessive volume of MSW, recyclables, white goods, and the like ~~\\$35.00~~ **\$60.00** per each three cubic yards or portion thereof.

(Ord. No. 16-O-05, § 1, 2-23-2016)

2. This ordinance shall be effective on and after July 1, 2019.

14. **Resolution 19-G-28, to consider Special Exception SE #19-03, 281 Sunset Park Drive, to allow a fitness facility; Applicant: Kavitha Maddi & Yogender Rakasi; Business Entity: Koko FitClub Herndon; Property Owner: Skyvish Square, LLC.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the March 8 and March 15, 2019 issues.

Mayor Merkel opened the public hearing and recognized David Stromberg, Zoning Administrator, for the staff report.

Mr. Stromberg presented the staff report and PowerPoint, which are on file in the Town Clerk's office. The proposed application is for a special exception to permit a fitness facility in the Sunset Business Park. The site is zoned PD-B, Planned Development – Business. As with all planned development zoning districts, this site is governed by proffers. One of the proffers requires that any exercise or recreation facility be approved for a special exception prior to being permitted to operate.

During the Planning Commission's February 11 work session and February 25, 2019 public hearing, the Commissioners did not raise concerns and recommended approval, with the conditions proposed by staff. Staff recommends approval of SE #19-03, as presented.

Councilmember Friedrichs asked if the owners agreed to the conditions. Mr. Stromberg confirmed.

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Vice Mayor Olem asked if the facility in Reston was still open. Mr. Stromberg stated the applicant closed the facility in Reston to move to Herndon.

Mayor Merkel stated her concern that there were other fitness facilities in the business park, and if staff had considered making it a use that was allowed.

Mr. Stromberg stated that the proffers were specific to that use, and the proffers would have to be amended.

The public hearing was held, and the following individual(s) provided testimony:

- Yogender Rakasi, applicant, clarified the locations of the business. He thanked Mr. Stromberg for his help during the process.

Following the public hearing, Vice Mayor Olem moved approval of Resolution 19-G-28, in accordance with the conditions recommended by staff. Councilmember McKenna seconded the motion.

Following brief comments by Council, the question was called on the motion, which carried by a 7-0 vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Resolution 19-G-28, to consider Special Exception SE #19-03, to allow a fitness facility in an existing commercial space in a PD-B, Planned Development – Business, zoning district.

WHEREAS, the applicants, Kavitha Maddi and Yogender Rakasi, have submitted a request for a special exception to permit a fitness facility in an existing commercial space located at 281 Sunset Park Drive and identified as Fairfax County Tax Map # 0164 21 0281; and

WHEREAS, fitness facilities are permitted in this zoning district subject to the approval of a special exception; and

WHEREAS, the Planning Commission has reviewed this application and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code; and

WHEREAS, following the public hearing, the Planning Commission recommended that the application be approved with conditions based upon the finding that the proposed use

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meets the purpose and intent of the Zoning Ordinance, in particular Section 78-155.3; and

WHEREAS, the Town Council has conducted a public hearing and has reviewed the Planning Commission recommendations.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby:

Approves Special Exception Application SE #19-03, in accordance with the conditions set forth below to achieve compliance with the standards found in Section 78-155.3;

- a. **Substantial conformity.** The site shall be operated in substantial conformance with the special exception application submitted January 25, 2019, except where modified by these conditions.
- b. **Permitted use.** The use shall be limited to a fitness facility.
- c. **Number of clients.** The total number of clients at the facility shall not exceed 6 during the hours of 8 a.m. through 6 p.m., Monday through Friday. The total number of clients shall not be limited outside of those hours provided the total number of occupants does not exceed that listed on the Certificate of Occupancy as determined by the Building Official.
- d. **Record of attendance.** The property owner or operator shall, upon reasonable notice by the town, provide a record of attendance or access to the property in order for enforcement staff to determine compliance with condition C above. Any record provided shall not include any personally identifiable information of clients.
- e. **Inspection.** The property owner shall, during hours of operation, make provisions to allow enforcement staff to inspect the property upon reasonable notice by the town.

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- f. **Expiration.** This Special Exception shall not run with the land and shall expire under the following condition(s):
 - i. A discontinuation of the use for which the special exception was granted for a continuous twelve-month period;
 - ii. Failure to commence operation of the use within twelve months of approval of the special exception;
 - iii. A change in substantial ownership of possession of the subject land.
- g. **Revocation.** Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h) of the zoning ordinance.

This resolution by its terms shall be effective on and after the date of its adoption.

GENERAL

15. Resolution 19-G-29, to amend the Parks and Recreation Fees - Special Facilities Use and Facility Rental Fees.

Mayor Merkel stated that comments received on this item have been entered into the record. She recognized Cindy Roeder, Director of Parks and Recreation, for the staff report.

Ms. Roeder presented the staff report, which is on file in the Town Clerk's office. The Parks and Recreation Department provides for community-use facilities at the Herndon Community Center. In April 2006, the full fee schedule for Parks and Recreation facilities was adopted to include a pricing structure for community center admission fees and passes based on the Fairfax County Park Authority (FCPA) rates. Comprehensive fee changes had not occurred since 2011. During the Department's review of current services and operational costs, staff proposes that the structure be revised to eliminate the connection to FCPA due to the detrimental impact to a large percentage of Herndon Community Center users.

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For FY20, staff recommends the following additions and revisions to its fee schedule for community use facilities:

- Eliminate the tie to the Fairfax County Park Authority fee structure and base all fees on a daily resident/non-resident fee effective September 1, 2019;
- Increase daily resident per visit pass by 50 cents;
- Continue the structure of the pass categories;
- Increase hourly fees to room rentals; and
- Continue the group admission discount.

Staff recommends approval of the proposed resolution, as presented.

In response to questions by from Vice Mayor Olem, Ms. Roeder stated that a notice would be posted after the Council made a decision. She stated that when users renew their passes they would be notified of the increase.

Councilmember Baker moved approval of Resolution 19-G-29, to amend the Parks and Recreation Fees - Special Facilities Use and Facility Rental Fees, as recommended by staff. Councilmember Friedrichs seconded the motion.

Councilmember Baker clarified the proportions of rate changes in response to previous comments. She stated that previous fee schedules were not proportional, and she was comfortable with the changes because it was working toward becoming more proportional and the community center was still competitive.

Mayor Merkel echoed Councilmember Baker's comments.

The question was called on the motion, which carried by a 7-0 vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Resolution 19-G-29, to amend the Special Facilities Use and Facility Rental Fees at the Department of Parks and Recreation.

WHEREAS, the Town's Department of Parks and Recreation operates the Herndon Community Center and other town parks and facilities; and

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WHEREAS, the department is expected to recover 75 percent of its operating costs through fees and charges for services; and

WHEREAS, the department recommends adoption of the amendments stated below to the *Special Facilities Use and Facility Rental Fees*.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby approves *the Special Facilities Use and Facility Rental Fees* and directs the Department of Parks and Recreation to implement the amended fee schedule effective September 1, 2019.

The amended fee schedule begins on the following page.

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Daily Rate	TOH	Basis	Non-Resident	Basis
Adult	\$7.00		\$8.00	15% above resident rate
Youth, Senior, Student	\$5.75	discount 20%	\$6.50	discount 20%
Family	\$19.75	2 Adult, 1 Youth	\$22.50	2 Adult, 1 Youth
10 - Visit Pass	TOH	discount 10%/visit	NR	discount 10%/visit
Adult	\$63		\$72	
Senior, Youth, Student	\$52		\$59	
25 - Visit Pass	TOH	discount 20%/visit	NR	discount 20%/visit
Adult	\$140		\$160	
Senior	\$115		\$130	
Youth & Student	\$115		\$130	
30-Day Pass				
Adult	\$56	8 monthly visits	\$72	9 monthly visits
Senior	\$46	8 monthly visits	\$59	9 monthly visits
Youth & Student	\$46	8 monthly visits	\$59	9 monthly visits
Adult 2-Person	\$84	50% off 2nd pass	\$108	50% off 2nd pass
Senior 2-Person	\$69	50% off 2nd pass	\$88	50% off 2nd pass
Adult/Senior 2-Person	\$74	50% off adult pass	\$95	50% off adult pass
Dependent Youth	\$14	70% off youth	\$18	70% off youth
6-Month Pass				
Adult	\$294	7 monthly visits	\$384	8 monthly visits
Senior, Youth & Student	\$242	7 monthly visits	\$312	8 monthly visits
Adult 2-Person	\$441	50% off 2nd pass	\$576	50% off 2nd pass
Senior 2-Person	\$362	50% off 2nd pass	\$468	50% off 2nd pass
Adult/Senior 2-Person	\$389	50% off adult pass	\$504	50% off adult pass
Dependent Youth	\$72	70% off youth	\$94	70% off youth
Annual Pass				
Adult	\$504	6 monthly visits	\$672	7 monthly visits
Youth, Senior, Student	\$414	6 monthly visits	\$546	7 monthly visits
Adult 2-Person	\$756	50% off 2nd pass	\$1,008	50% off 2nd pass
Senior 2-Person	\$621	50% off 2nd pass	\$819	50% off 2nd pass
Adult/Senior 2-Person	\$666	50% off adult pass	\$882	50% off adult pass
Dependent Youth	\$124	70% off youth	\$164	70% off youth

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- Youth is defined as age 2-18 years.
- Dependent youth fees require a paid adult or senior adult pass.
- A senior adult is defined as age 65 or over.
- For all 25 admission, monthly, six month and annual passes, the amount shall be rounded to the nearest dollar increment. Daily admission fees shall be rounded to the next twenty-five cent increment.
- Daily admission discounts or special use passes may be offered on a limited term basis to encourage attendance during non-peak times, for special uses such as weekday, mid-day gym use, and respond to changes in operating schedule during inclement weather or Fairfax County public school holidays.

Facility Group Rate

Groups of 12-50 with advance reservation and single payment receive 25% off daily admission rate.

Groups of 51 or more with advance reservation and a single payment receive 10% off the daily admission rate.

Room Rental Fees

<i>Facility</i>	<i>Current Hourly Rate</i>	<i>Proposed Hourly Rate</i>
1/2 gym*	\$115	\$130
Full Gym*	\$225	\$250
Community Room 1*	\$125	\$150
Arts & Crafts Room*	\$40	\$60

*Four hour minimum, additional time at \$80/145/125 per hour; 1.5 hours included for set up and clean up

*Two hour minimum, additional time at \$25/hour

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CONSENT AGENDA

16. **Resolution 19-G-30, to consider authorization to submit Creative Communities Partnership Grant to the Virginia Commission for the Arts (formerly the Local Government Challenge Grant).**

On motion of Councilmember Baker, seconded by Vice Mayor Olem, and carried by a vote of 7-0, the following Consent agenda item was approved, without comment. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Resolution 19-G-30, to authorize the submission of a Creative Communities Partnership Grant Application/Virginia Commission for the Arts.

WHEREAS, the Virginia Commission for the Arts provides grant monies to Virginia localities under the Creative Communities Partnership Grant (formerly the Local Challenge Grant) for redistribution to nonprofit organizations for arts activities; and

WHEREAS, the Town of Herndon has solicited grant applications from organizations and recommends that a \$4,500 grant be submitted for the proposal submitted by Arts Herndon.

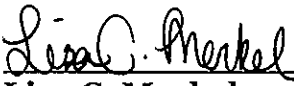
WHEREAS, the funding for this program requires that the Town appropriate an equal amount of funds for arts activities in the community and recommends funding be included in the proposed FY 2020 budget.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that the Town Manager is hereby authorized to submit a Creative Communities Partnership Grant application to the Virginia Commission for the Arts.

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ADJOURNMENT

There being no further business, the meeting adjourned at 10:21 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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