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**HERNDON TOWN COUNCIL
Work Session
Tuesday, May 7, 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, May 7, 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; Cindy Roeder, Director of Parks and Recreation; Jennie Tripoli, Director of Finance; Tammy Chastain and John Irish, Deputy Directors of Public Works; Maggie DeBoard, Chief, Herndon Police; Dana Heiberg, Senior Planner; David Stromberg, Zoning Administrator; and Amina Ait-Bella, Legislative Assistant.

PRESENTATIONS

1. **Proclamation, to recognize "Asian Pacific American Heritage Month," May 2019; and**
2. **Proclamation, to recognize "Memorial Day," May 27, 2019.**

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There was no discussion on the presentations, which are scheduled for the May 14, 2019 public hearing.

PUBLIC HEARINGS

3. **Ordinance, to amend the Fiscal Year 2019 Adopted Budget by amending the General Fund and Capital Projects Fund budgets to provide the financial adjustments needed to implement the Town Manager's recommended mid-year budget modifications.**

Mayor Merkel announced that action on the proposed budget amendment would require a roll call vote at next week's public hearing.

The Town Manager stated that the Council used to review this in January or February, but this year, staff waited for the tax receipts to be submitted.

The Director of Finance presented the staff report dated May 7, which is on file in the Town Clerk's office. She further explained the process and stated that the Business, Professional, and Occupational License (BPOL) tax was one of the most volatile revenue sources. She was glad that staff waited for businesses to submit these receipts because of the unexpected BPOL loss this year. She discussed some of the budget policies that were put into place last year, including changing budget transfer amounts.

The Director of Finance stated that the proposed ordinance was a budget amendment, which would include non-discretionary items that were not anticipated in the FY 2019 budget; projects that were funded by outside grant money; and budget transfers that met the threshold for Council's approval. The proposed mid-year budget modifications would support the Council's priorities, goals, and objectives. She reviewed the proposed requests and financial adjustments that were recommended for Council consideration and action, as provided in the staff report.

The Director of Finance stated that staff was requesting \$252,500 from the General fund balance and the rest of the requests were supported by new revenues. She stated that \$210,000 of the General fund request was a transfer to the information systems fund for the final portion of the police radio replacement project. The remainder was to fund excess landfill and recycling costs.

The Director of Finance highlighted some of the requests in the Water and Sewer fund, which included:

- \$292,000 to cover Fairfax County's share of the Sugarland Run sewer pipe relining project (76 percent of \$383,000);

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- \$18,000 to cover sewer lateral repair costs that exceeded the appropriation in the relevant expense account;
- \$110,000 to cover increases in water purchase costs passed on to the town from Fairfax Water;
- \$200,000 to cover increased sewer treatment costs related to higher inflow and infiltration from last calendar year's record rainfall; and
- \$12,500 to cover final implementation costs for the Tyler Munis Utilities module.

The Director of Finance stated that staff requested \$10,000 for the Cemetery fund to cover costs associated with memorial sales, which would be funded by memorial sale revenues.

The request for the Capital Projects fund was \$118,311 to cover expenditures associated with the replacement of the new gym floor at the Community Center that had been damaged by a defective sprinkler, offset by insurance recoveries for the same.

Staff recommends approval of the proposed ordinance, as presented.

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

In response to queries from Councilmember Friedrichs, The Director of Finance stated that the General fund request was \$383,000. She stated that \$635,000 was for the Enterprise funds.

4. Resolution, to consider adoption of the Town Manager's recommended FY 2021 – FY 2025 portion of the FY 2020 – FY 2025 Capital Improvement Program.

The Town Manager provided a brief overview and recognized the Senior Planner for the staff report. He asked Council to pay close attention to water and sewer projects planned for the next three years, along with transportation and road projects that would be critical for the Herndon Metro Station area.

The Senior Planner presented the staff report and PowerPoint dated May 7, which are on file in the Town Clerk's office. He stated that the Council adopted funding for the FY 2020 portion of the CIP with the adoption of the annual operating budget at its April 23 public hearing. The FY 2020-2025 portion of the CIP is a plan for funding projects from a variety of sources, subject to future budget action.

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The Senior Planner reviewed the annual CIP process. He highlighted the projects for each department and the FY 2020 to FY 2025 proposed funding sources, as outlined in the PowerPoint. He stated that the proposed CIP contained 47 projects ~ 35 General fund projects and 12 Enterprise fund projects. He stated most of the projects were on-going from the adopted FY 2019 to FY 2024 CIP, but there were two new projects, the Herndon Police Exterior Garage and the Traffic Signal on Elden Street at Herndon Centre. He reviewed the breakdown of funding or financing sources for the projects in each fund. This included grant funding, the General fund, and General Obligation Bonds. The Senior Planner discussed how the proposed CIP would align with the town's Comprehensive Plan and adjustments that were made to the Town Manager's recommended CIP. He stated that there were three recurring maintenance projects that were removed from the CIP, including buildings and major maintenance, GSA vehicles, and major road repaving.

The Senior Planner stated that at its February 25 meeting, the Planning Commission recommended the CIP to the Town Manager. The Town Manager made several adjustments to the Planning Commission's recommendation, which were listed in the PowerPoint.

Staff recommends approval of the proposed resolution, as presented.

The Town Manager provided summary comments. He stated that many of the items in the CIP were described during the budget, including the BPOL loss. He stated that in looking at the outyears, it was important to remember that the CIP was a financial plan. Going into next year, the town planned to utilize a financial analyst. He stated that a large portion of the water and sewer amount is the sewer capacity purchase, from either Fairfax Water or Loudoun Water. He stated that projected growth in town makes the water and sewer capacity more important.

There was a brief discussion amongst Council and staff on the proposed CIP.

Vice Mayor Olem thanked staff for including attachment #3, which detailed grant funding.

There was brief discussion amongst Council and staff about the police radio project (project #30).

In response to queries from Councilmember Baker, the Chief of Police stated that she would be providing a report on the radio project.

The Town Manager stated that the town has been setting aside money over a period of time for the radio project while the county had delayed the project. The budget adjustment for this project that was discussed earlier this evening was the last installment to fund that effort.

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In response to queries from Mayor Merkel, the Chief of Police and the Town Manager stated that this project had been ongoing for several years. The Chief of Police stated that this was typical of large projects because it relies on many different jurisdictions, but the town was prepared to pay for it. The town does not get to decide when they make the switch in the radios, but the town and county have to be on the same radio system.

In response to queries from Councilmember Baker about the timing for the new HPD garage, the Town Manager stated that would be in FY 2021. It emerged this year but was delayed due to budget constraints.

Councilmember Baker stated that it sounded like a lot of money.

The Chief of Police stated that they were surprised at the amount. She stated that staff had a study done to assess the cost.

Councilmember Baker expressed concerns over the timing for funding the Herndon Community Center (HCC) phase five. She questioned if next year, the funding could be pushed back further if there are budget constraints.

In response to Councilmember Baker, the Town Manager cautioned Council about making that decision this year and instead, asked them to wait for the financial analyst to finish their work.

In response to Mayor Merkel, the Town Manager stated that even if they took action on this item next week, the Council had flexibility in the CIP outyears.

Councilmember Baker stated that she had the same question about timing and funding for the Runnymede Park Nature Center.

The Town Manager emphasized that while there was flexibility in the outyears, he preferred having a solid plan and a financial plan to go along with it. He stated that in the past, the projections might not have been as fine-tuned as they probably should. Evaluation of operations impact could also be improved.

There was further brief discussion on the CIP and the upcoming financial analysis.

The Town Manager stated that by law the town had to have an adopted CIP. He stated that he would like to provide the Council with more data, which he should have next year.

The Senior Planner stated that the deadline to adopt the CIP was the beginning of the fiscal year.

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In response to an inquiry from Councilmember del Aguila, the Town Manager stated that there would be money borrowed, because there would be \$30 million water capacity purchase. The town was in a good position to borrow because of its AAA bond rating and low interest rates.

Councilmember del Aguila stated that there needs to be a discussion about borrowing money and the risks involved. He asked how the \$26 million of grant funding would be secured, and if there would be a risk of not receiving the full amount.

The Senior Planner stated that the amount was from about a dozen different grant sources. He stated that staff generally does not add grants to the CIP unless the funding was pretty committed from the source.

The Town Manager briefly outlined some of the risks with grant funding.

In response to an inquiry from Councilmember del Aguila, the Town Manager discussed road repaving and operations and maintenance.

In response to queries from Councilmember del Aguila, the Town Manager agreed that BPOL rates have not changed in while. He stated that the town's BPOL schedule was higher than Fairfax County.

5. Resolution, to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event.

The Town Attorney presented the staff report dated May 7, which is on file in the Town Clerk's office. She reviewed the proposed resolution to approve a temporary use permit to Jimmy's Old Town Tavern to use the adjacent town alley located at the corner of Elden and Spring Street for outdoor seating during their event on Sunday, May 26. The owner of the property applied for a temporary use permit to expand their outdoor retail sales for an annual event. This use also requires a temporary license agreement, which controls noise, sales, and seating. The license controls the use of town property and requires insurance. Staff recommends approval of the proposed resolution, as presented.

There was a brief discussion among Council and staff.

In response to an inquiry from Councilmember Friedrichs, the Town Attorney stated that the license agreement could not be done administratively due to requirements from the Code of Virginia.

There was further discussion amongst Council and staff.

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6. Ordinance, to grant a second franchise amendment to Zayo Group, LLC for a route expansion and increase in allowance of conduit.

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

The Deputy Director of Public Works presented the staff report and PowerPoint dated May 7, which are on file in the Town Clerk's office. The proposed ordinance was the second franchise amendment for Zayo Group, LLC. It would allow a route expansion of 875 linear feet in the town's right-of-way for a total route of approximately 1,380 linear feet. She reviewed the route expansion, type of conduit, and location. Staff recommends approval of the proposed ordinance, as presented.

The Deputy Director of Public Works explained the difference between five and eight number of conduits. She stated that the larger conduit took up more room in the roadway.

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

7. Ordinance, to approve a natural gas line easement to Columbia Gas for an underground main service line located on Town-owned property.

The Town Attorney provided a brief overview and explained that the easement was expedited to allow Columbia Gas to get the line to the elementary school. The town has been working with Columbia Gas and Fairfax County Public Schools to get this completed. The Town Attorney introduced the Deputy Director of Public Works for the staff report.

The Deputy Director of Public Works presented the staff report dated May 7, which is on file in the Town Clerk's office. He stated that the location of the line would be to Clearview Elementary School, and the town property was off a cul-de-sac on Young Avenue. Since this was located on town property, it required the Council's approval. There is town property adjacent to Folly Lick Run stream and a park that the gas line has to cross. It is a 20-foot-wide easement from Young Avenue to the intersection at Fairfax County Park Authority land. He stated that it was relatively standard agreement. Once this was finalized, Columbia Gas would be held to all the town standards and requirements. Staff recommends approval of the proposed ordinance, as presented.

There were no comments from Council.

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GENERAL

8. **Resolution, to authorize the removal of delinquent and uncollectible charges from the town's accounting records.**

The Director of Finance presented the staff report dated May 7, which is on file in the Town Clerk's office. The proposed resolution is for approval from the Council to write off \$2,800 in uncollectable accounts. She stated that last year's write-off was \$35,000, which was partially a clean-up of previous years. She stated that the town cannot keep uncollectable amounts on the accounting records; however, if there were a way to collect the items, the town would accept and process the receipts. She stated that moving to a third party parking ticket vendor was a huge part of the decrease in the write-offs this year. Staff recommends approval of the proposed resolution, as presented.

There was brief discussion amongst Council and staff about tax collection.

Following brief discussion and with the concurrence of Council, staff was asked to move this item to the consent agenda for next week's public hearing.

9. **Resolution, to authorize a Standard Project Administration Agreement between the Town and VDOT for redesign and reconstruction of the intersection of Monroe and Elden Streets.**

The Deputy Director of Public Works presented the staff report dated May 7, which is on file in the Town Clerk's office. The proposed resolution would authorize an agreement between the town and the Virginia Department of Transportation (VDOT). He reviewed the revenue sharing projects process and stated that the town entered into a programmatic agreement with VDOT on August 13, 2013 for a three-year term and a one-time, three-year extension that would expire on June 30, 2019. The project at the intersection of Elden and Monroe Streets was under this agreement, and it now must be put under a Standard Project Agreement. It would be a standalone project with the same revenue sharing funding grant, but it must have a different title and be administered separately. Staff recommends approval of the proposed resolution, as presented.

Following brief discussion and with the concurrence of Council, staff was asked to move this item to the consent agenda for next week's public hearing.

10. **Ordinance, to repeal Herndon Town Code Section 42-154, Parking for Certain Purposes Prohibited.**

Mayor Merkel stated that the Council received information on this previously.

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The Town Attorney presented the staff report dated May 7, which is on file in the Town Clerk's office. The proposed ordinance would repeal §42-154. Staff had been examining the town's parking ordinances for consistency with recently adopted zoning regulations. The review found that the section was inconsistent and otherwise obsolete and, therefore, should be repealed. The Town Attorney stated that she had reviewed this specific ordinance that had been on the books for many years. She stated that other jurisdictions have repealed similar ordinances. Staff recommends approval of the proposed ordinance, as presented.

Following brief discussion and with the concurrence of Council, staff was asked to move this item to the consent agenda for next week's public hearing.

CONSENT AGENDA

11. **Proclamation, to recognize "Public Works Week," May 19 - May 25, 2019; and**
12. **Proclamation, to recognize "Kids to Parks Day," May 18, 2019.**

There were no comments on the Consent agenda.

ROUNDTABLE

1. **Councilmember Baker:** Stated that she would like to discuss the "crib concerts."

The Town Attorney stated that there was pending litigation on that matter.

Councilmember Baker stated that was what she wanted to ask. She stated that the individual has closed the concert, according to his website, and his house was for sale. She asked what would happen with the pending litigation, since it seemed like he was giving up.

The Town Attorney stated that the litigation would still exist regardless of whether the actionable use of the property that caused the Board of Zoning Appeals (BZA) decision existed or not. The town filed according to the BZA decision and needed to follow through with it. There was a hearing set for the end of May and the individual has not filed an answer to one of the town's petitions. There were two petitions, which were not consolidated. She stated that it would be up to the court whether to consolidate the petitions.

Councilmember Baker stated that her concern was that the town is spending time, money, and resources on litigation. She stated that it feels like a huge waste of time.

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The Town Attorney stated that as a lawyer, she must pursue the petition that she filed in the court, even though the Council could direct her to do something different. The town would still need to resolve the matter with an action.

Mayor Merkel stated that she did not want to do anything that would make the town spend more resources on this case.

Councilmember Baker asked if the Council should schedule a closed meeting.

There was brief discussion on scheduling a closed meeting for this matter.

The Town Attorney recommended discussing pending litigation in a closed session, if there was will to do that.

In response to queries from Councilmember Baker, the Town Attorney stated that she would encourage the Council to wait until after the hearing date to hold the closed session, so the court could have a chance to review it. The court date that was discussed was May 24.

2. **Vice Mayor Olem:** Stated that the Herndon Rotary "Senior Senior Prom" was held. She thanked the Herndon Police Department for their help with the event.

Vice Mayor Olem asked the Town Manager for an update on the Council retreat.

The Town Manager provided an update. To find an individual to lead a retreat, he used the International City/County Management Association (ICMA), who had a person who recently published an article about Council interaction in the "Public Management" magazine. He reviewed the proposal from this consultant, who could lead the retreat and serve as a resource to the town for the next year.

In response to queries from Mayor Merkel, the Town Manager stated that the total cost would be \$17,000.

In response to queries from Vice Mayor Olem, the Town Manager stated that the cost of the last retreat was \$6,000. He stated that was a different format.

Mayor Merkel stated that she did not think the last two Council retreats were worth the cost. Two retreats ago, she urged staff to not pay the second half of the fee, because Council came away from it more divided than when they entered it.

There was brief discussion amongst Council and staff about previous retreats and the funding for a Council retreat.

In response to queries from Councilmember Friedrichs, the Town Manager stated that he could transfer money if needed to fund the retreat.

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Vice Mayor Olem stated that she thinks it is needed for the group, but they are five months into the term and this has been going on for months. She stated that she wished this had been discussed sooner. She stated that she had brought this up before and had provided the Town Manager with some suggestions for a moderator.

The Town Manager stated that he called the individuals Vice Mayor Olem suggested, but they were more focused on board of directors type of groups.

Mayor Merkel stated that she thought it was a lot of money to spend on a retreat, considering the town had just raised taxes. She stated that by the time the retreat happened it would be six or seven months into the term.

There was further discussion.

Vice Mayor Olem stated that the Council needed to do something, or what had been going on would continue.

Mayor Merkel asked for clarification.

Vice Mayor Olem stated it was the bickering, the less-than cordial affect they have for one another often, and she did not think it was appropriate.

There was brief discussion amongst Council about working together professionally.

Councilmember Friedrichs expressed support for a retreat, but she stated that the cost was surprising.

There was further discussion about Council behavior.

Vice Mayor Olem asked if the Council no longer wanted to hold a retreat.

Councilmember Friedrichs stated that the cost was the main concern.

Mayor Merkel suggested having the individual the Town Manager suggested ready to lead a Council retreat next term, in January or February of that term.

Councilmember del Aguila expressed support for the retreat. He thanked Vice Mayor Olem for her leadership on this item.

Councilmember Dhakal stated that he thinks he is in the middle. He thinks Council should be able to resolve the problem themselves, but an external person giving another perspective would be useful. He expressed concern over the costs.

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The Town Manager stated that the consultant has two books and an article he could share with the Council. He had talked with the consultant about how there was a lot of commonality between the Councilmembers. He stated that was what could be focused on for building professional relationships. The consultant was impressed with the Council had been excited about potentially working with them.

In response to Councilmember Friedrichs, the Town Manager stated that he would send the article and the links to the books to Council.

Councilmember del Aguila stated that he was a "net-net kind of guy." He stated if the Council would not spend the \$17,000, then it was a waste of time.

Councilmember Friedrichs asked for clarification.

Councilmember del Aguila stated that if no one is sold on the value of the consultant, there is not a need to spend his time or anyone else's time.

Councilmember Baker stated that the offer to send an article seemed reasonable.

The Town Manager stated that article was written for him to facilitate conversations with Council.

Councilmember del Aguila stated that his prediction is that no one will change their mind.

Councilmember Baker stated that the article was not intended to change their minds.

Councilmember del Aguila stated that the point of discussion was to decide on the retreat.

Vice Mayor Olem stated that is why she brought it up. She stated that she has been bringing it up for months.

There was further discussion among Council and staff on consultants for a retreat.

The Town Manager stated that he thought the consultant he found through ICMA was the best one, after looking at several options.

Councilmember Dhakal asked if Council could keep the option for a retreat open.

Vice Mayor Olem expressed concern that the retreat would not take place until the summer, when individuals were out of town.

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Mayor Merkel stated that she thinks the Council could solve these issues by talking to one another. She suggested getting together to talk casually.

Councilmember Friedrichs stated that all things being equal, she thought the Council could benefit from a retreat, were it not for the high cost. She stated that if the Council got together informally after meetings, it would be a good start in the right direction.

Mayor Merkel stated that she would like to try to talk with one another. She proposed that for the next retreat, the sitting Council should set the date for the retreat in advance, so that those running for Council would know to be available on specific dates.

COMMENTS FROM THE TOWN MANAGER

The Town Manager stated that the next community roundtable would be at the Neighborhood Resource Center (NRC) on June 18, 2019. The NRC would provide translation support, space for the event, and help with advertising and marketing. He stated that the town would pay for the NRC to provide childcare. He stated that staff researched notetaking, and the cost of these services and associated complications ~ like translation and recording devices ~ were too costly. The next community roundtable would be in the fall.

The Chief Communications Officer stated that staff was meeting with the NRC and they would be working out additional details.

Councilmember Friedrichs suggested that the Councilmembers present take their own notes.

There was brief discussion amongst Council and staff about taking notes at the roundtable.

In response to queries from Mayor Merkel, the Town Manager stated that the Councilmembers were not required to take notes. However, if they were handed a Freedom of Information Act (FOIA) request, they would have to give that to staff.

Mayor Merkel suggested having a list of major topics discussed at each table.

In response to a comment from Vice Mayor Olem about Airbnb, Mayor Merkel stated that she believed that the Planning Commission continued that item to September.

There was further brief discussion on the community roundtable.

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The Town Manager stated that the Heritage Preservation Review Board (HPRB) would be hearing three certifications from Comstock Partners, LLC on the downtown on Wednesday, May 15. He encouraged Councilmembers to spread the word about the meeting.

The Town Attorney asked Council to advise the Town Clerk if they were planning to attend the HPRB meeting, so she could send out a notice if more than two members of Council planned to attend.

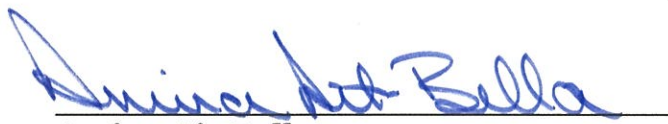
There was brief discussion amongst Council and staff about the requirements for notices.

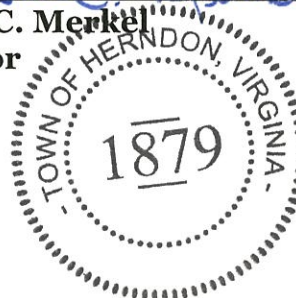
The Town Manager advised of his schedule and stated that he would be out of the office midday Thursday through Friday.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:45 p.m.


Lisa C. Merkel
Mayor


Amina Ait-Bella
Legislative Assistant



Minutes approved by Town Council: June 11, 2019.