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HERNDON TOWN COUNCIL
Work Session
Tuesday, December 3, 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, December 3, 2019, at 7:00 p.m., there were present:

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

Councilmember Jennifer K. Baker was absent.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Elizabeth Gilleran, Director of Community Development; Page Kalapasev, Director of Information Technology; Cindy Roeder, Director of Parks and Recreation; Scott Robinson, Director of Public Works; Tammy Chastain and John Irish, Deputy Directors of Public Works; David Stromberg, Zoning Administrator; Mark Duceman, Transportation Program Planner; Jaleh Moslehi, Capital Projects Planner/Engineer; Jennie Tripoli, Director of Finance; Karen Gagliano, Budget Manager; Amanda M. Kertz, Deputy Town Clerk; and Jessica Sizemore, Legislative Assistant.

ANNOUNCEMENT

Mayor Merkel stated that Councilmember Baker would be absent.

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PRESENTATION

1. Presentation of the Town's Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended June 30, 2019 (by Brown Edwards and Company, LLP, Certified Public Accountants)

The Director of Finance stated that the auditors would be in attendance to present this report at the December 10 meeting.

PUBLIC HEARINGS

2. Ordinance, to consider Zoning Ordinance Text Amendment ZOTA #18-03, to amend Chapter 78 (ZONING), Article III (Residential Districts), Article V (Planned Development Districts), Article VIII (Accessory Uses), to permit and establish limitations on short-term rentals as an accessory use to residential dwelling units provided certain standards are met, whereas they are currently not permitted, and to define the term. A maximum fee of \$200 will be established in Section 78-152.2(b)(3) (Fees), for a two-year permit and inspection for short-term rental establishments pursuant to Virginia Code 15.2-2286(A)(6)

Mayor Merkel stated that she had a disclosure and she would be recusing herself from this item. When she stepped out of the meeting, she would relinquish the chair to Vice Mayor Olem.

Disclosure:

- **Mayor Merkel** stated, for the record, that she owns a rental home in California with her husband. She stated that although this matter may not have application solely to property or business in which she has a personal interest, she would recuse and disqualify herself from presiding and voting on this transaction and that she would relinquish the chair to the Vice Mayor. She has filed the appropriate disclosure with the Town Clerk and Town Attorney.

(Note: at 7:02 p.m., Mayor Merkel relinquished the chair to Vice Mayor Olem and she left the work session room.)

Vice Mayor Olem recognized the Zoning Administrator for the staff report.

The Zoning Administrator presented the staff report dated December 3, 2019, which is on file in the Town Clerk's office. The proposed ordinance would establish regulations for short-term rentals in the town. The proposed language would allow operators of short-term rentals to obtain proper permits and give enforcement staff

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the tools needed for effective enforcement. This text amendment was initiated based on language in 2017 legislation in the Code of Virginia (VA Code § 15.2-983) which granted localities the ability to create a short-term rental registry and affirmed a locality's right to regulate short-term rentals through its general land use and zoning authority. Short-term rentals were both unregulated and undefined in the zoning ordinance. The purpose of the proposed ordinance was to define the use and establish standards.

The Town Council approved the initiating resolution for this ordinance on June 12, 2018. The language was refined over the past 18 months during several Planning Commission work session meetings and public hearings.

There was a brief question and answer session between the Zoning Administrator and Councilmember Friedrichs.

Staff and the Commission worked to balance the interests of short-term rental operators with the need to protect the health, safety, and welfare of the community. The Zoning Administrator discussed the residency requirements in the proposed ordinance, which included the maximum number of nights a homeowner could operate a short-term rental.

There was a brief question and answer session between the Zoning Administrator and Vice Mayor Olem, as well as Councilmembers del Aguila and Friedrichs.

The Zoning Administrator discussed the differences between the town's proposed requirements and those of neighboring jurisdictions.

On October 28, 2019, the Planning Commission passed a resolution recommending adoption of the zoning text amendment. The resolution further resolved that the Council would direct staff to reevaluate the standards for short-term rentals with the Planning Commission by 24 months of the effective date.

The proposed language would define short-term rentals as an accessory use and takes a two-pronged approach to regulate short-term rentals. Much of the review and verification of compliance with the standards would occur at the beginning of the process through administrative review of the application. An inspection would follow. The Zoning Administrator summarized the proposed requirements which in the staff report.

There was brief discussion amongst Councilmember Dhakal, Vice Mayor Olem, and the Zoning Administrator, about the residency requirements and maximum number of allowed adults.

The Zoning Administrator stated there was a limit of six adults allowed during a rental period, with a maximum of one rental contract per night.

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There was further discussion amongst Councilmembers and staff about parking, the number of adults who could rent per night, and other requirements and provisions for renters.

The Zoning Administrator concluded the staff report and stated that staff and the Planning Commission recommend approval of the proposed ordinance, as presented. It was also recommended that staff follow the Commission's recommendation to reevaluate the ordinance by 24 months after adoption.

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

There was a brief question and answer session between Councilmembers Dhakal, Friedrichs, McKenna, and the Zoning Administrator.

In response to queries from Council McKenna, the Town Attorney discussed state legislation regarding a Short Term Residential Rental Registry.

In response to queries from Vice Mayor Olem, the Zoning Administrator stated that he would get back to Council about the maximum number of unrelated adults that could be in a residence during a short-term rental period.

The Town Manager stated that staff could answer Council's outstanding questions over email in the next several days.

Vice Mayor Olem questioned whether there should be more than one public hearing on this item. She stated that parking was one of the major issues she heard about from the public.

Following discussion, Mayor Merkel was advised to return to the work session.

3. Ordinance, to approve and authorize the Mayor to sign a Lease Agreement between the Town and The Elden Street Players, for space at 750 Center Street

(Note: at 7:24 p.m., Vice Mayor Olem relinquished the chair to Mayor Merkel, following discussion on the previous item.)

Mayor Merkel resumed chairing the meeting and called on the Town Attorney for the staff report.

The Town Attorney presented the staff report dated December 3, 2019, which is on file in the Town Clerk's office. The town is currently party to a one-year lease with the Elden Street Players (NextStop Theatre Company) for space at 750 Center Street. The lease expires on December 31, 2019. The rent would remain at its

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current rate would continue on a month-to-month basis for a maximum term of one year until December 31, 2020. Staff recommends approval of the proposed ordinance, as presented.

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

In response to queries from Mayor Merkel, the Town Attorney clarified that the \$1.00 rental fee was annual rather than monthly.

In response to queries from Councilmember del Aguila, the Director of Finance reviewed how staff had looked at setting up town rentals as in-kind contributions. Staff concluded that it would not make sense for the town to change the contracts, as they were not a loss for the town and paying commission to the town's broker would cost the town money. At 397 Herndon Parkway, where the town leased space to several local officials, the town was neither using nor marketing that space.

The Town Manager stated that commercial leasing rates in the area were not affected by the town not listing the town-owned spaces.

4. Ordinance, to approve and authorize the Mayor to sign a Lease Agreement between the Town and Arts Herndon, Inc., for space in 750 Center Street

The Town Attorney presented the staff report dated December 3, 2019, which is on file in the Town Clerk's office. The town is currently party to a one-year lease with the Arts Herndon, Inc., for space at 750 Center Street. This lease expires on December 31, 2019. The rent for this space would at its current rate and the lease would continue on a month-to-month basis for a maximum term of one year until December 31, 2020. Staff recommends approval of the proposed ordinance, as presented.

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

Councilmember Friedrichs suggested changing the rent for Arts Herndon to \$1.00 per year to align its rate with the rent of other nonprofits.

Following discussion and with the concurrence of Council, staff was directed to change the annual rental rate to \$1.00, similar to the leases the town has with other nonprofits.

The Town Attorney stated they would provide an amended ordinance for Council to review next week. The Council would consider both the advertised and amended rate at next week's meeting.

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5. Ordinance, to approve and authorize the Mayor to sign a Lease Agreement between the Town and Delegate Samirah for space at 397 Herndon Parkway

The Town Attorney presented the staff report dated December 3, 2019, which is on file in the Town Clerk's office. To be consistent with the Delegate's term, this lease expires on December 31, 2021. The rent for this space would be \$1.00 per year, consistent with leases for office space at Town Hall for the former Delegate Boysko and Delegate Samirah's current rent for this space. Staff recommends approval of the proposed ordinance, as presented.

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

6. Ordinance, to approve and authorize the Mayor to sign a Third Lease Amendment between the Town and Evince Analytics, Inc., for space at 397 Herndon Parkway

The Town Attorney presented the staff report dated December 3, 2019, which is on file in the Town Clerk's office. Evince Analytics, Inc. is currently party to a month-to-month lease with the town that they want to continue. The proposed lease was for a one-year term and would expire on December 31, 2020. In the proposed agreement, square footage was reduced from 4,512 square feet to 3,512 square feet. The rent for this space would be \$5,000 per month. Staff recommends approval of the proposed ordinance, as presented.

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

7. Resolution, to approve and authorize the Mayor to sign a second amendment to the Pilot Project Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the Town of Herndon, Virginia (Resolution 18-G-31) adopted on June 12, 2018, to extend the project termination date

The Town Attorney presented the staff report dated December 3, 2019, which is on file in the Town Clerk's office. In June 2018, the town entered into a Pilot Project Agreement with Vivacity DC, Inc. to explore and evaluate the impact of smart city technologies and services in downtown Herndon. Due to unexpected project challenges, Vivacity requested extension of the agreement termination date from June 30, 2021 to December 31, 2021. Staff recommends approval of the proposed ordinance, as presented.

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

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8. **Resolution, to approve and authorize the Mayor to sign an amendment to the License Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the Town of Herndon, Virginia, dated June 30, 2019, to include EV Charging stations and related equipment**

The Town Attorney presented the staff report dated December 3, 2019, which is on file in the Town Clerk's office. The proposed resolution would authorize an amendment to the License Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the town. It would authorize Mayor Merkel to sign the First Amendment to the License Agreement and any associated documents. The town and Vivacity Networks, LLC, entered into a license agreement on June 30, 2019 for the use of designated public property and public right-of-way.

This first amendment would include an electric vehicle charging station, associated equipment to operate fiber cable, Wi-Fi, and smart city functionality located in downtown Herndon. The Town Attorney stated that this would be the conclusion of the construction of the pilot project and it would operate for two years as indicate in the agreement. Staff recommends approval of the proposed ordinance, as presented.

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

There was discussion amongst Council and staff about the charging station and a "super charging station" for the town, which was not included in the agreement.

Mayor Merkel mentioned how Warrenton was using Tesla charging stations as an economic development tool. She and the Economic Development Manager had previously talked about these charging stations. She stated this might be something to consider in the future as the program moves forward.

There were brief comments from Council about the charging stations.

GENERAL

9. **Resolution 19-G-68, to authorize Project Administration Agreements between the Town and Fairfax County for the administration of Herndon Metrorail Station Access Management Study (HMSAMS) Projects (Continued from November 12)**

(Note: This item was continued from the Council's November 12, 2019 meeting.)

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Mayor Merkel announced that this item was continued from the Council's November 12 meeting. She recognized the Deputy Director of Public Works for comments.

The Deputy Director of Public Works provided brief comments on this item. He stated that the Council continued this resolution because the town did not have the draft final agreement at the time. The Fairfax County Board of Supervisors would consider this matter at their meeting tonight and the Council would consider it at the public hearing next week. This would put the town in line for the available funds that were listed in the resolution.

Following brief discussion and comments from Council, it was decided that this item would remain on the General portion of the agenda for next week's meeting.

10. Resolution, to support RSTP and CMAQ applications title: To consider authorization of project applications to the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program / Congestion Mitigation-Air Quality (RSTP/CMAQ) funding for Fiscal Year 2026 and to endorse the town's transportation projects included in VDOT's FY 2020-2025 Six-Year Improvement Program

The Transportation Program Planner introduced the new Capital Projects Planner/Engineer, Jaleh Moslehi. He presented the staff report dated December 3, 2019, which is on file in the Town Clerk's office. The proposed resolution would authorize the submittal of two project applications to the NVTA - RJACC for RSTP and CMAQ funding for Federal fiscal year 2026. The proposed resolution would endorse the town's transportation projects for the Urban system component of the adopted Virginia Department of Transportation's (VDOT) Six-Year Improvement Program for fiscal years 2020-2025.

The Transportation Program Planner outlined the proposed projects, as follows:

- **RSTP Proposed Project:**
East Elden Street Improvements and Widening (CIP #12) - The funding application request was up to \$2.2 million for the East Elden Street project.
- **CMAQ Proposed Project:**
Herndon Metrorail Intermodal Access Improvements - II (CIP #13, the "bus bays" project) – The funding application request was up to \$700,000 to replenish funds that were used in Phase 1 of the project.

Staff recommends approval of the proposed resolution, as presented.

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

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Following brief discussion and comments from Council, it was decided that this item would remain on the General portion of the agenda for next week's meeting.

CONSENT AGENDA

11. **Resolution, to reappoint Yung C. Kim to the Town of Herndon's Board of Zoning Appeals;**
12. **Resolution, to reappoint Randy Jaegle as the Town of Herndon member to the Phase II Dulles Rail Transportation Improvements Tax District Advisory Board;**
13. **Resolution, to appoint Erin Wolff as a "citizen" member to the Town Council's Pedestrian and Bicycle Advisory Committee; and**
14. **Resolution, Award of Contract, Herndon Festival Carnival Operations – RFP 20-02**

There was no discussion on the consent agenda items.

DISCUSSION

15. Community Donations Process

Mayor Merkel recognized the Director of Finance and the Budget Manager for the staff presentation and to begin the discussion.

The Director of Finance presented a PowerPoint dated December 3, 2019, which is on file in the Town Clerk's office. The last time Council discussed community donations was during the FY 2020 budget process. She reviewed the town's options under the Code of Virginia; discussed possible ways to simplify the donation process; talked about donations from prior years; and provided suggestions for improving the donation process.

In the PowerPoint, staff suggested simplifying the donation process by retaining the current request form, removing the interim reporting requirement from organizations, and paying the entire donation at the beginning of the fiscal year. The Director of Finance stated that HCTV generally received 50 percent of the total amount; NextStop and Arts Herndon split the remaining 45 percent, and the leftover five percent could be split up amongst the smaller groups. She asked the Council to think about how they would want that five percent allocated to the smaller nonprofits.

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Regarding in-kind donations, the Director of Finance stated that staff was working to determine the actual levels of in-kind support provided by the town. Staff would share those amounts at a later date.

The Town Manager provided comments about in-kind donations and how events take a toll on Department of Public Works and Herndon Police employees. The hours also have an effect on the emergency and on-call staff. The town might be woefully undercounting its in-kind donations. Once staff had a better understanding of the costs, they might be back to Council with a better plan on how to staff town events as it moves closer to budget time.

The Director of Finance asked Council if they thought the town should consider changing its communications with the groups this year. Changes to the policy would require a resolution.

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

Mayor Merkel asked if there was value in looking at how other organizations provide grants or donations and consider some kind of qualifier that determines how much a group could request from the town.

Vice Mayor Olem, Councilmembers Friedrichs and McKenna provided comments on Mayor Merkel's suggestions.

There was discussion amongst Council and staff on why the town provides donations and the organizations they benefit.

Councilmember Friedrichs asked that the town make any changes to the donations policy in small amounts.

Councilmember del Aguila suggested scheduling a retreat for Council to discuss the donations process, along with other issues, as a body.

There was further discussion.

Councilmember del Aguila suggested looking at other ways to support nonprofit groups besides monetary donations.

Following discussion with input from the Town Manager, it was the concurrence of Council that the donations to nonprofits should be discussed separately from the donation to HCTV.

There was brief discussion amongst Council about how organizations support themselves and how they are supported by the community.

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Mayor Merkel suggested that any changes to the donation policy be incremental.

Following discussion and with the concurrence of Council, Mayor Merkel stated that Council would like to:

- Maintain the current donations application form;
- Remove the interim reporting requirements; and
- Provide one check at the beginning of the year.

Mayor Merkel asked if staff had additional suggestions.

The Director of Finance suggested a lottery system for the remaining \$10,000 that was not allocated to HCTV or the two arts organizations or a "first come first serve" basis.

There was further brief discussion amongst Council and staff.

Councilmember Friedrichs asked if staff could simplify the donation application. She suggested that the nonprofit submit several forms, including proof of 501 (c)(3) status and form 990; provide the number of years operated in town; and submit a statement about the work they do for the town.

Following comments from the Town Manager, the in-kind donation process was set aside for future discussion.

In response to Councilmember del Aguila's queries about employees donating time to organizations in town, the Town Manager reviewed how he and the Director of Human Resources had looked into this idea. He stated that he would talk with the Director of Human Resources about it and get back to the Council.

There was brief discussion amongst Council and staff about employees donating their time to organizations.

In response to Mayor Merkel's suggestion about moving the donation application online, the Director of Finance stated that staff was concerned about the security of submitting confidential tax documents.

Councilmember Dhakal suggested a direct drop off or mailing of secure information, in addition to an online application for the other necessary information.

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ROUNDTABLE

1. **Councilmember McKenna:** Hoped everyone had a good Thanksgiving.
2. **Councilmember Friedrichs:** Stated that she enjoyed attending Arts Herndon's "Fabulous 40s" event with Councilmember Baker and Vice Mayor Olem. Arts Herndon raised \$4,000 that evening. She stated that Arts Herndon is preparing for a Mardi Gras Masquerade event in February and encouraged those present to mark their calendars.

Councilmember Friedrichs suggested that staff form a small ad hoc committee to work on updating old documents, using input from different stakeholders.

The Town Manager stated that there was a systemic approach being taken already, but he would speak with department heads to look at their external facing documentation for possible improvements. He would report the scope back to Council. He stated that staff was actively looking for policy improvements.

3. **Councilmember del Aguila:** Thought that yesterday's joint work session with the HPRB was productive. He stated that he learned a lot from a different perspective.

Councilmember del Aguila suggested scheduling a Council planning session. He shared concerns about the philosophical implications of the Council ruling on something that they wrote.

Councilmember McKenna agreed with Councilmember del Aguila's comments about voting on items the Council wrote.

Mayor Merkel stated that she followed up on that same topic with the Town Manager and Town Attorney. She suggested considering appeals going to the Board of Zoning appeals rather than the Council.

Following discussion, Mayor Merkel stated that this topic warrants further discussion amongst Council.

Councilmember del Aguila stated that he was excited about the idea of a Tesla charging station, which was discussed earlier with the Vivacity agreement.

The Town Manager stated that he would speak with the Economic Development Manager about working on a Tesla charging station for the town.

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The Town Manager stated that he would email out more information about Councilmember del Aguila's other questions.

4. **Vice Mayor Olem:** Stated that she enjoyed spending time with her family at the Pinnacle in Virginia. She shared that she saw many houses in that area with metal roofs. She also saw metal roofs the last time she visited Alabama.

Vice Mayor Olem stated that she enjoyed the joint HPRB work session. She suggested that they should be held at least once or twice a year.

Mayor Merkel agreed and stated she thought future joint work sessions were a great idea, especially when the guidelines were released.

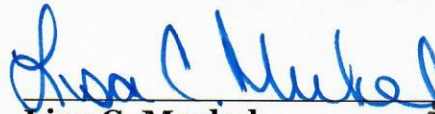
5. **Mayor Merkel:** Mayor Merkel stated that she met with Senator Boysko and Delegate Samirah to discuss the legislative program, and they were on board.

Mayor Merkel stated that Leadership Fairfax visited her office earlier today to discuss affordable housing.

Mayor Merkel was looking forward to the Holiday Homes Tour and the tree lighting this weekend. She was also excited about the Herndon WinterMarkt on Saturday, December 14.

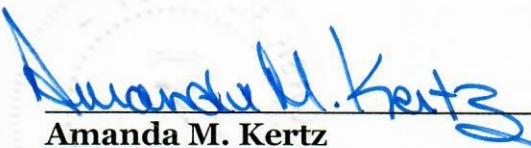
ADJOURNMENT

There being no further business, the meeting adjourned at 8:40 p.m.



Lisa C. Merkel
Mayor





Amanda M. Kertz
Deputy Town Clerk

Minutes approved by Town Council: January 14, 2020.

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NOTE:

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