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HERNDON TOWN COUNCIL
Tuesday
December 10, 2019

The Town Council met in public session on Tuesday, December 10, 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 Baker; Cesar del Aguila; Pradip Dhakal; Bill McKenna; and Signe Friedrichs.

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; Jennie Tripoli, Director of Finance; Page Kalapasev, Director of Information Technology; Scott Robinson, Director of Public Works; Cindy Roeder, Director of Finance; John Irish, Deputy Director of Public Works; David Stromberg, Zoning Administrator; Jaleh Moslehi, Capital Projects Planner/Engineer; Margie C. Tacci, Deputy Town Clerk; and Jessica Sizemore, Legislative Assistant.

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

PLEDGE OF ALLEGIANCE

Mayor Merkel acknowledged the Cub Scouts from Pack 913, sponsored by St. Joseph's Church, who led the audience in the Pledge of Allegiance to the Flag of the United States of America.

ANNOUNCEMENT

Mayor Merkel stated that tonight was the Council's last meeting before the holidays and the last public hearing of the year. She extended her personal wishes to all for a safe and wonderful holiday season with family and friends.

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(public hearing)**

APPROVAL OF MINUTES

**Vote on October 29, 2019
Town Council Public Hearing Minutes**

On motion of Councilmember McKenna, seconded by Councilmember Friedrichs, and carried by unanimous vote, the minutes of the October 29, 2019 public hearing were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

**Vote on November 6, 2019
Work Session Minutes**

On motion of Councilmember McKenna, seconded by Councilmember Friedrichs, and carried by unanimous vote, the minutes of the November 6, 2019 work session were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

**Vote on November 12, 2019
Town Council Public Hearing Minutes**

On motion of Vice Mayor Olem, seconded by Councilmember Friedrichs, and carried by a vote of 6-0, the minutes of the November 12, 2019 public hearing were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember McKenna abstaining.

PRESENTATION

3. 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)

Mayor Merkel recognized Jennie Tripoli, Director of Finance, who would introduce the auditors.

Ms. Tripoli introduced Matthew Heatwole, Director, Brown Edwards and Company, LLP, Certified Public Accountants, to present the CAFR.

Mr. Heatwole presented a PowerPoint, which is on file in the Town Clerk's office. He discussed this year's CAFR, Management Letter, and Required Communication Letter, also on file in the Town Clerk's office.

Following Mr. Heatwole's presentation there was brief discussion amongst Council and staff.

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In response to queries from Councilmember McKenna, Mr. Heatwole stated that he could further examine the debt ratio and provide more information.

There were further brief comments from Council.

4. COMMENTS FROM THE TOWN MANAGER

William H. Ashton II, provided comments about the trash and recycling schedule that the town followed for the Thanksgiving holiday. The town received several complaints about the schedule changes, which he outlined. Staff would follow a similar process for the upcoming Christmas and New Year's Day holidays. To alleviate the concerns, staff was reaching out to homeowners' associations, issuing a news release, posting on social media and the town's website, and would continue to post roadside signs providing residents with the holiday schedules. There would also be a trash and recycling phone line for residents to call if their home was missed. He hoped this outreach would lessen the impact of the changes for the upcoming holidays.

5. COMMENTS FROM THE TOWN COUNCIL

Councilmember McKenna: Provided information about the upcoming Herndon Holiday Model Train Show on Saturday, December 14 and Sunday, December 15 at the Herndon Municipal Center and the Depot.

Councilmember McKenna wished everyone Happy Holidays, especially to those facing a difficult time this year. He gave examples of ways to help military families and students who receive reduced lunches.

Councilmember Friedrichs: Echoed Councilmember McKenna's comments and wished everyone present Happy Holidays.

Councilmember Friedrichs provided comments about Herndon Elementary School's parent resource night. She stated that the Herndon Police Department was there to create and support their relationships with families and the school.

Councilmember Friedrichs enjoyed the Town Council-Herndon Preservation Review Board (HPRB) special work session on Monday, December 2. The two bodies discussed updating the HPRB Guidelines.

Councilmember Friedrichs stated that Saturday, December 14 was National Wreaths Across America Day and the Herndon Wintermarkt would also be held that day. She looked forward to hearing the Herndon High School Band play. She provided comments on the Herndon Holiday Homes Tour that was held last Saturday, December 7, where she was a docent for the tour.

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Councilmember del Aguila: Echoed Councilmember Friedrichs' comments about the Town Council-HPRB Special Work Session. He asked citizens to send in their feedback on the HPRB Guidelines.

Councilmember Baker: Echoed her colleagues' comments on the Homes Tour; Wreaths Across America; Wintermarkt; and Model Train Show. She also discussed the Tree Lighting that was held on Saturday, December 7 and expressed kudos to the Chamber and the town's Department of Public Works; music sponsored by Vivacity; and the Herndon Woman's Club Craft Fair.

Councilmember Baker echoed her colleagues' wishes for Happy Holidays and stated she would see everyone in January.

Councilmember Dhakal: Echoed his colleagues' comments on the upcoming holiday events.

Councilmember Dhakal stated that he attended the Dulles Area Transportation Authority's (DATA) annual meeting and holiday reception with Vice Mayor Olem and Councilmember del Aguila, where the Silver Line Metrorail was discussed.

Councilmember Dhakal echoed his colleagues' comments about the Town Council-HPRB Special Work Session and encouraged citizens to send in their comments.

Councilmember Dhakal wished those present Happy Holidays, Merry Christmas, and a Happy New Year. He stated he was thankful to have been on Council for one year.

Vice Mayor Olem: Stated that her microphone was not working.

Vice Mayor Olem thanked the Department of Public Works for posting signage about the changes to trash and recycling.

Vice Mayor Olem echoed her colleagues' comments about the Holiday Homes Tour, where she was a docent for the Rotary House; Wintermarkt; and offered her holiday wishes.

Vice Mayor Olem discussed the Herndon Rotary Club's efforts at Safeway to help those in need. She would be at Safeway on Saturday, December 14, 1:00-3:00 p.m., and club members would be there all day. Shopping lists would be provided for those who wanted to purchase items for those in need and would be taken to area organizations.

Mayor Merkel: Stated that town offices would close at noon on Tuesday, December 24 and all-day Wednesday, December 25 and Wednesday, January 1. She encouraged those interested to visit the town's website for the refuse collection schedule and the hours of operation for the community center and golf course.

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Mayor Merkel echoed Vice Mayor Olem's comments about the outreach for trash and recycling for Thanksgiving.

Mayor Merkel stated that the television screens in the Chambers would be repaired. She stated that those at home could view the meeting on HCTV.

Mayor Merkel stated that the town calendar was forthcoming.

Mayor Merkel stated that there was a wireless microphone available for those that might need it. She asked staff to bring a wireless microphone to the Vice Mayor since hers was not working.

6. COMMENTS FROM THE AUDIENCE

The following members of the audience provided comments:

- Diane Weiss, 706 Morningside Court, Herndon, provided comments on Item #14, Resolution 19-G-68, which was on the General portion of the agenda. She asked the town to put in an easement for both water control and access to a public pathway from Four Seasons to "Reflection." She previously submitted comments for the record, which are on file in the Town Clerk's office.

In response to Ms. Weiss' comments, Mayor Merkel asked if staff had her contact information.

Mr. Ashton stated that staff was looking into Ms. Weiss' concerns.

- Alexander Burke, 910 Jorrs Place, #304, Herndon (The Harbor House), provided comments on affordable housing for senior citizens in the downtown.
- Ann Vayda, 631 Oak Street, Herndon, stated she was concerned that it seemed citizens had to submit a Freedom of Information Act (FOIA) request to the town receive answers. She asked the town to respond to her requests about the two failed structures on Florence Place.

Ms. Vayda enjoyed the Holiday Homes Tour and stated that the town benefits from the homeowners' efforts. She discussed the homes in the Heritage District and stated that "citizens in good standing respectfully request that you release us from the bonds of Heritage burdens."

- Barbara Glakas, 935 Barton Oaks Place, Herndon, provided written comments and a PowerPoint for the record, which are on file in the Town Clerk's office. She discussed the intersection of Barton Oaks Place and Ferndale Avenue, which she stated was dangerous, especially the left turn. For the record, she stated that she was opposed to waiting for a certain number of accidents to occur at an intersection before the

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town intervenes. She asked that the town consider adding a "No Parking from Here to Corner" sign at the northeast corner of Ferndale and Barton Oaks Place to prevent cars from parking too close to the corner and to improve the line of sight.

Mayor Merkel stated that staff was taking note of Ms. Glakas' concerns.

PUBLIC HEARINGS

7. **Ordinance 19-O-43, 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**

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 Friday, November 22; and Wednesday, November 27, 2019 issues.

Mayor Merkel opened the public hearing and 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.

Mayor Merkel asked if there was a wireless microphone for Vice Mayor Olem and the Deputy Town Clerk brought over the microphone.

(Note: at 7:42 p.m., Mayor Merkel relinquished the chair to Vice Mayor Olem and she left the room.)

Staff Report

Vice Mayor Olem stated that comments received on this item had been entered into the record. She recognized David Stromberg, Zoning Administrator, for the staff report.

Mr. Stromberg presented the staff report and PowerPoint dated December 10, 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

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operators of short-term rentals to obtain proper permits and give enforcement staff the tools needed for effective enforcement. This text amendment was initiated based on language in 2017 legislation in the Code of Virginia, which granted localities the ability to create a short-term rental registry and affirmed a locality's right to regulate short-term rentals. The purpose of the proposed ordinance was to define and establish standards for short-term rentals. 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. The zoning language was intended to work in concert with the short-term rental registry.

Mr. Stromberg discussed the residency requirements, notice to homeowners association, maximum number of nights a homeowner could operate a short-term rental, and the maximum number of adults per rental contract, per night. Mr. Stromberg reviewed the required operational, administrative and enforcement provisions. Staff recommends approval of the proposed ordinance, as presented. Staff also recommends reevaluating the amendment and its effectiveness after 24-months, which had been requested in the Planning Commission's review of this item.

Questions of Council

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

There was a brief question and answer session between Councilmember Dhakal and Mr. Stromberg.

There was a brief question and answer session between Councilmember Baker and Mr. Stromberg.

Point of Order

Councilmember del Aguila called a point of order asking how much time was given.

Vice Mayor Olem stated this was the time to ask questions and as she understood it, if she was renting her house and had 300 people show up, the neighbors would not be happy.

Questions of Council

In response to queries from Councilmember Baker about the letter received from the Northern Virginia Association of Realtors, Mr. Stromberg explained the short-term rental registry versus the short-term rental zoning provisions.

There was a brief question and answer session between Councilmember del Aguila and Mr. Stromberg.

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There was a brief question and answer session between Councilmember Friedrichs and Mr. Stromberg.

There was a brief question and answer session between Vice Mayor Olem and Mr. Stromberg.

There were further brief comments from Council.

Motion

Following the public hearing (there were no comments from the audience), Councilmember McKenna made a motion to approve Ordinance 19-O-43 and this motion was seconded by Councilmember del Aguila.

There were brief comments from Council.

The question was called on the motion, which carried by a vote of 6-0. The vote was: Councilmembers, Baker, del Aguila, Dhakal, Friedrichs, McKenna, and Vice Mayor Olem voting "Aye." Mayor Merkel was away from the dais.

[Note: Attached for reference, at the end of the minutes, is the text of Ordinance 19-O-43.]

[Note: At 8:08 p.m., Mayor Merkel returned to the dais to preside over the rest of the public hearing.]

8. Ordinance 19-O-44, 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

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing had been advertised in the Wednesday, November 27, 2019 issue.

Mayor Merkel opened the public hearing and called on Lesa Yeatts, Town Attorney, for the staff report.

Ms. Yeatts presented the staff report dated December 10, 2019, which is on file in the Town Clerk's office. The proposed ordinance was a lease between the town and The Elden Street Players for space at 750 Center Street. This lease was for a one-year term and would expire on December 31, 2020. The rent for this space would be \$1.00 per lease term. Staff recommends approval of the proposed ordinance, as presented.

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Following the public hearing (there were no comments from the audience), Vice Mayor Olem moved approval of Ordinance 19-O-44, as presented. Councilmember Baker seconded the motion.

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

Ordinance 19-O-44, Approving and authorizing the Mayor to sign a Lease Agreement between the Town and The Elden Street Players, for space at 750 Center Street.

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

1. The Town Council approves a lease dated December 10, 2019, by which the Town would lease to The Elden Street Players certain space in part of the Town's building at 750 Center Street, Herndon, Virginia. The rent shall be \$1.00. The term shall be from January 1, 2020 through December 31, 2020. The lease may contain certain other terms agreed to by the Mayor and Town Manager.
2. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is the lease agreement b/n the town and The Elden Street Players dated December 10, 2019.]

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LEASE AGREEMENT

THIS LEASE made on the 10th day of December 2019, by and between THE TOWN OF HERNDON, a municipal corporation (Landlord) and THE ELDEN STREET PLAYERS., a Virginia corporation (Tenant).

Recitals

Landlord is the owner of a building and premises located at 750 Center Street, Herndon, Virginia (the building).

Landlord and Tenant have agreed that Tenant will lease from Landlord, in consideration of the rent and other benefits, and under the terms and conditions specified here, the premises commonly known as part of the building at 750 Center Street consisting of approximately 2,790 square feet as shown on Exhibit A, attached and incorporated by reference which shall be called "leased premises."

THEREFORE, the parties agree as follows:

1. **Commencement and Ending Date of Term.** Beginning January 1, 2020, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may remain in the leased premises on a month-to-month basis with the Tenant having the right to terminate the Lease upon 30 days prior written notice to the Landlord, and the Landlord having the right to terminate the Lease upon 30 days prior written notice to the Tenant. In any event, the term of this lease shall expire December 31, 2020. If the Lease is terminated due to redevelopment of the land at 750 Center Street, Herndon, VA, Landlord shall give ample time to Tenant to remove itself from the facility. In the event of Town's redevelopment of the land at 750 Center Street, the parties understand that Landlord will terminate this lease. This last sentence clarifies, not limits, the parties' agreement as set out in this paragraph.

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2. **Rent.** Tenant shall pay Landlord on demand \$1.00 rent; and shall allow Town access to and from and use of the Industrial Strength Theatre at 269 Sunset Park Drive, for Landlord's Parks and Recreation Programs (IST Space). Landlord and Tenant shall confer and use their best efforts to agree as to the dates of Landlord's such use. Tenant shall provide custodial services for these events. Tenant assures, represents, and warrants to Landlord that Tenant enjoys and will enjoy right of possession of the IST space and rights to license or sublease the IST space to Landlord. Landlord shall provide a physical separation structure or device between the leased premises and Landlord's remaining space in the building. Tenant allows and assures to Landlord Landlord's right of access from the double doors on the Vine Street side of the building to and from the Landlord's remaining space on the west side of the building. Tenant shall keep this access area (which Tenant may use with Landlord for Tenant's uses) free of Tenant's property or sustained uses.

3. **Use of Premises.** Tenant shall use the leased premises solely for storage, construction, or dismantling of theater props, sets, and other supplies of a theatrical company.

4. **Utility Charges.** Landlord shall maintain and pay the cost of all utilities (except telecommunications) on the leased premises.

5. **Liability Insurance.** Tenant shall keep in effect a policy of bodily injury and property damage liability insurance with respect to the leased premises in commercially reasonable amounts, as determined by Landlord. The policy shall name the Landlord as insured.

6. **Hold Harmless of Landlord.** Tenant shall hold harmless Landlord, its officers, agents, and employees from any and all claims, actions, damages, liability and expense, including reasonable attorney's fees, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises, or the occupancy or use by Tenant of the leased premises or any part thereof.

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7. Default. Tenant shall be in default upon failure to perform any term of this lease for more than five days after written notice of such failure shall have been given to Tenant or after Tenant's abandonment of the leased premises.

8. Rights and Remedies on Default. Landlord shall have the following rights on default of Tenant, which shall be cumulative, none excluding any other right allowed by this lease or by law.

a. Landlord may enter the leased premises and repossess the leased premises and remove Tenant and any others who may be occupying the leased premises and remove any property.

b. Landlord may seize, remove and sell all of the personal property and fixtures of Tenant on the leased premises or remove and store such property at the cost of and for the account of Tenant.

9. Waste or Nuisance. Tenant shall not commit any waste or nuisance upon the leased premises.

10. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any equipment in the leased premises in their existing condition. Tenant shall at all times keep the leased premises in good order, condition, and repair. Tenant shall maintain the leased premises in a clean and sanitary condition. If Landlord is required to make any repairs by reason of Tenant's negligent or intentional act or omission, Tenant shall pay to Landlord the cost of the repairs as additional rent within ten days after written notice. Landlord shall be responsible for roof, structural integrity of the building, and replacement and repair of utility systems related to the leased premises. Except as provided in paragraph 13, Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

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11. Notification of Hazard. Tenant and Landlord shall give immediate notice to the other in case of fire, accident, or defect in the leased premises or in any fixtures or personal property comprising the leased premises.

12. Alterations and Improvements. Except as provided in this paragraph, Tenant shall not make or cause to be made any alterations to the leased premises without first obtaining Landlord's written consent. With Town eventual approval of plans (both as a government and as Landlord), Tenant at its expense may make other changes to the leased premises consistent with the purposes of this lease.

13. Removal of Improvements and Restoration by Tenant. All alterations except lighting not necessary for normal use of the building or conformance with the Virginia Uniform Statewide Building Code made by Tenant shall remain the property of Landlord at the expiration or termination of the lease. This property will remain part of the leased premises and Tenant shall not have any obligation to remove it.

14. Loss and Damage. Landlord shall not be liable for any loss or damage to property of Tenant located on the leased premises. Landlord shall not be liable for any injury, death, or damage to persons or property associated with Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the leased premises. Landlord shall not be liable for any latent defect in the leased premises or in the building of which they form a part. All property of Tenant or its subtenants kept or stored on the leased premises shall be so kept or stored at the risk of Tenant or subtenants and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

15. Right of Entry. Landlord, its contractors, agents, or prospective purchasers or lessees, shall have the right to enter the leased premises during normal business hours to examine the same

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upon reasonable notice, either oral or written.

16. Quiet Enjoyment. Upon the observance of all Tenant's obligations of this lease, Tenant shall peaceably and quietly hold and enjoy the leased premises.

17. Surrender of Premises. At the expiration or termination of the term of this lease, Tenant shall surrender the leased premises in the same condition that the leased premises were in at the commencement of this lease, except as provided in paragraph 13, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord.

18. Assignment and Subletting. Except as provided in paragraph 3, Tenant may not assign this lease without prior written consent of Landlord. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

19. Binding on Successors/Assigns. All of the terms of this lease shall bind the successors and assigns of Landlord and Tenant, except where the assignment is ineffective due to lack of Landlord's consent.

THE ELDEN STREET PLAYERS, INC.

By: Vicki Kile 11/18/19
Name: Vicki Kile
Title: President

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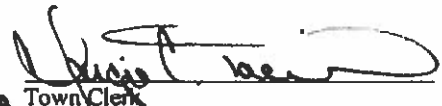
TOWN OF HERNDON, VIRGINIA

By: _____

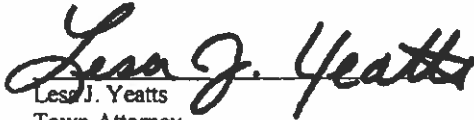

Lisa C. Merkel
Mayor



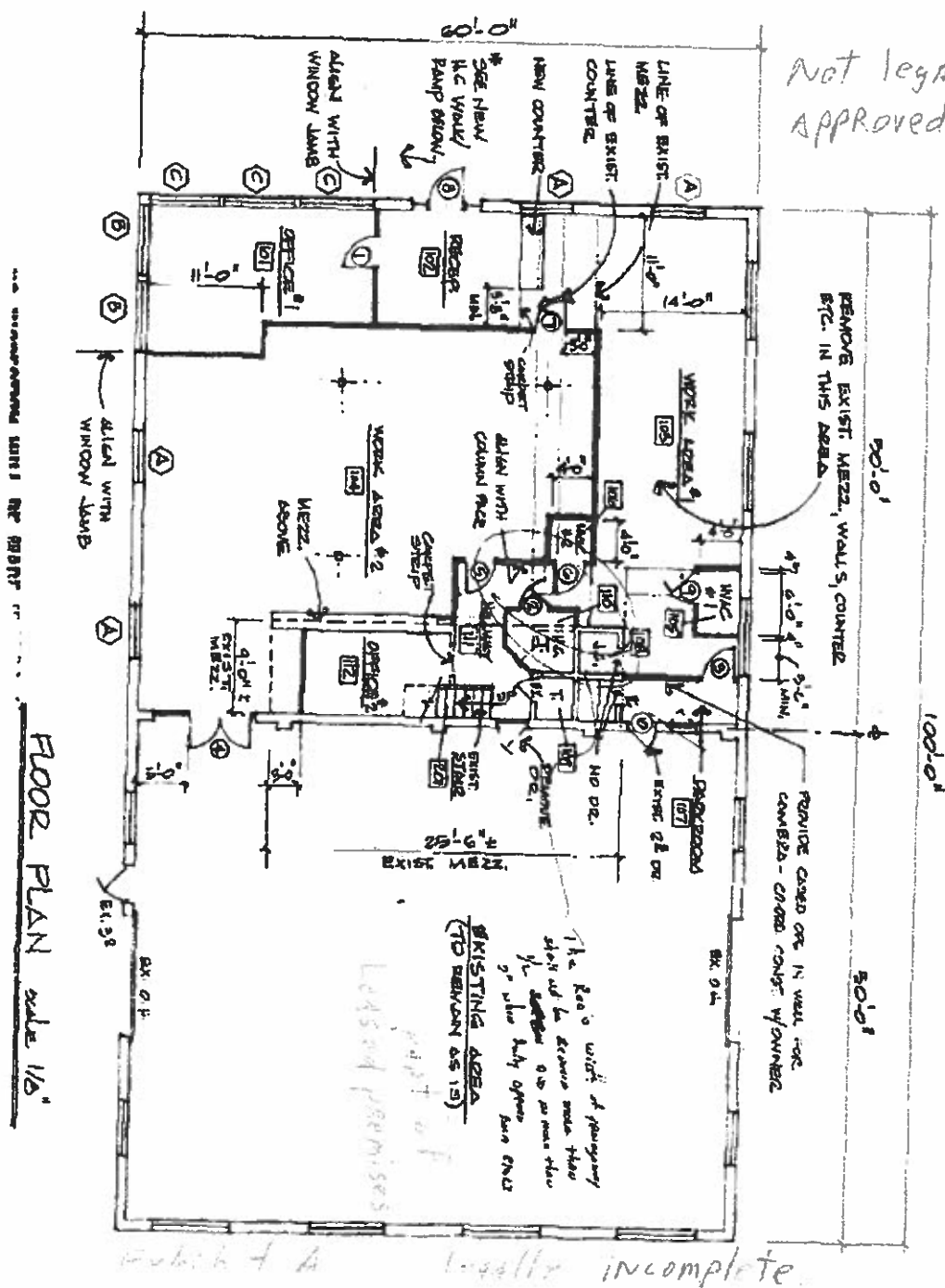
ATTEST:


Town Clerk

APPROVED AS TO FORM:


Lisa J. Yeatts
Town Attorney

Not legally
Approved



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9. Ordinance 19-O-45, to approve and authorize the Mayor to sign a Lease Agreement between the Town and Arts Herndon, Inc., for space in 750 Center Street

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing had been advertised in the Wednesday, November 27, 2019 issue.

Mayor Merkel opened the public hearing and called on Lesa Yeatts, Town Attorney, for the staff report.

Ms. Yeatts presented the staff report dated December 10, 2019, which is on file in the Town Clerk's office. The proposed ordinance was a lease between the town and Arts Herndon, Inc. Staff provided two alternatives for the Arts Herndon lease which Ms. Yeatts outlined. This lease was for a one-year term and would expire on December 31, 2020. The rent for Alternative 1 would be \$200 per year, while the rent for Alternative 2 would be \$1.00 per year, similar to other nonprofit groups.

Following the public hearing (there were no comments from the audience), Councilmember Friedrichs moved to **APPROVE** Ordinance 19-O-45, **Alternative 2**, under paragraph #1, which states:

- “....The rent shall be **\$1.00 per lease term**. The term shall be from January 1, 2020 through December 31, 2020. The lease may contain certain other terms agreed to by the Mayor and Town Manager.”

Councilmember del Aguila seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting “Aye.”

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Ordinance 19-O-45, Approving and authorizing the Mayor to sign a Lease Agreement between the Town and Arts Herndon, Inc., for space in 750 Center Street.

BE IT ORDAINED by the Town Council for the Town of Herndon that:

1. The Town Council approves a lease dated December 10, 2019, by which the Town would lease to Arts Herndon, Inc., the Town's building at 750 Center Street, Herndon, Virginia. The rent shall be \$1.00 per lease term. The term shall be from January 1, 2020 through December 31, 2020. The lease may contain certain other terms agreed to by the Mayor and Town Manager.
2. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is the lease agreement b/n the town and Arts Herndon dated December 10, 2019.]

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LEASE AGREEMENT

THIS LEASE made on the 10th day of December 2019, by and between THE TOWN OF HERNDON, a municipal corporation (Landlord) and ARTS HERNDON, INC., a Virginia non-profit, charitable corporation (Tenant).

Recitals

Landlord is the owner of a building and premises located at 750 Center Street, Herndon, Virginia (the building).

Landlord and Tenant have agreed that Tenant will lease from Landlord, in consideration of the rent and other benefits, and under the terms and conditions specified here, a portion of the premises commonly known as part of the building at 750 Center Street, (as shown on Exhibit A, attached and incorporated by reference) and outside lawn area, and gravel parking spaces, which shall be to the east and south side of the building, which shall be called "leased premises." Use of parking spaces is non-exclusive and must conform to the Zoning Ordinance (2007), Herndon Town Code. Parking and outside lawn areas that are elements of the leased premises are also shown on Exhibit A.

THEREFORE, the parties agree as follows:

1. **Commencement and Ending Date of Term.** Beginning January 1, 2020, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may remain in the leased premises on a month-to-month basis with the Tenant having the right to terminate the Lease upon 30 days prior written notice to the Landlord, and the Landlord having the right to terminate the Lease upon 30 days prior written notice to the Tenant. In any event, the term of this lease shall expire December 31, 2020. If the Lease is terminated due to

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redevelopment of the land at 750 Center Street, Herndon, VA, Landlord shall give ample time to Tenant to remove itself from the facility. In the event of Town's redevelopment of the land at 750 Center Street, the parties understand that Landlord will terminate this lease. This last sentence clarifies, not limits, the parties' agreement as set out in this paragraph.

2. Rent. Tenant shall pay Landlord on demand \$1.00 per lease term.

3. Use of Premises. Tenant shall use the leased premises solely for a cultural arts center including an art gallery, meetings with artists, small group sessions with artists and the public, art classes, and artistic events. Tenant may also make all or part of the leased premises available for public or private meetings or public or private events for a fee (except as provided below), when Tenant is not using all or part of the leased premises. Subject to availability (as determined by Tenant), Tenant shall permit Landlord to use rent free the interior of the leased premises for Landlord sponsored community meetings for up to four days or part thereof per calendar year, a value of \$1,400 per calendar year. Tenant certifies to Landlord that such internal and external uses are consistent with the Town of Herndon Zoning Ordinance and architectural guidelines or ordinances of the Herndon Town Code. Tenant on at least 30 days notice from Landlord shall accommodate its exterior use of the leased premises to Landlord's predominant use of this exterior space for the yearly Herndon Festival or other periodic or unique festivals, events, or activities. Tenant shall provide janitorial service to the leased premises. Landlord shall mow the yard space surrounding the leased premises and the building. Tenant shall maintain other landscaping (approved by Landlord) on the Center Street exterior facade of the building. Landlord shall provide a physical separation structure or device between the leased premises and Landlord's remaining space in the building.

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4. Utility Charges. Tenant shall maintain and pay the cost of all utilities (including telecommunications) on the leased premises. Landlord shall equitably prorate these costs based on building square footage (except telecommunications), advise Tenant quarterly of Tenant's prorata share of these costs (except telecommunications), and then settle up fairly with Tenant on the costs of these utilities, which Tenant shall pay on demand to Landlord.

5. Liability Insurance. Tenant shall keep in effect a policy of bodily injury and property damage liability insurance with respect to the leased premises in commercially reasonable amounts, as determined by Landlord. The policy shall name the Landlord as an additional insured.

6. Hold Harmless of Landlord. Tenant shall hold harmless Landlord, its officers, agents, and employees from any and all claims, actions, damages, liability and expense, including reasonable attorney's fees, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises, or the occupancy or use by Tenant or its subtenants of the leased premises or any part thereof.

7. Default. Tenant shall be in default upon failure to perform any term of this lease for more than five days after written notice of such failure shall have been given to Tenant or after Tenant's abandonment of the leased premises.

8. Rights and Remedies on Default. Landlord shall have the following rights on default of Tenant, which shall be cumulative, none excluding any other right allowed by this lease or by law.

a. Landlord may enter the leased premises and repossess the leased premises and remove Tenant and any others who may be occupying the leased premises and remove any property.

**December 10, 2019
(public hearing)**

b. Landlord may seize, remove and sell all of the personal property and fixtures of Tenant on the leased premises or remove and store such property at the cost of and for the account of Tenant.

9. Waste or Nuisance. Tenant shall not commit any waste or nuisance upon the leased premises.

10. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any equipment in the leased premises in their existing condition. Tenant shall at all times keep the leased premises in good order, condition, and repair. Tenant shall maintain the leased premises in a clean and sanitary condition. If Landlord is required to make any repairs by reason of Tenant's negligent or intentional act or omission, Tenant shall pay to Landlord the cost of the repairs as additional rent within ten days after written notice. Landlord shall be responsible for roof, structural integrity of the building, and replacement and repair of utility systems related to the leased premises. Except as provided in paragraph 13, Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

11. Notification of Hazard. Tenant and Landlord shall give immediate notice to the other in case of fire, accident, or defect in the leased premises or in any fixtures or personal property comprising the leased premises.

12. Alterations and Improvements. Except as provided in this paragraph, Tenant shall not make or cause to be made any alterations to the leased premises without first obtaining Landlord's written consent. With Town eventual approval of plans (both as a government and as Landlord), Tenant at its expense may make other changes to the leased premises consistent with the purposes of this lease.

**December 10, 2019
(public hearing)**

13. Removal of Improvements and Restoration by Tenant. All alterations except lighting not necessary for normal use of the building or conformance with the Virginia Uniform Statewide Building Code made by Tenant shall remain the property of Landlord at the expiration or termination of the lease. This property will remain part of the leased premises and Tenant shall not have any obligation to remove it.

14. Loss and Damage. Landlord shall not be liable for any loss or damage to property of Tenant located on the leased premises. Landlord shall not be liable for any injury, death, or damage to persons or property associated with Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the leased premises. Landlord shall not be liable for any latent defect in the leased premises or in the building of which they form a part. All property of Tenant or its subtenants kept or stored on the leased premises shall be so kept or stored at the risk of Tenant or subtenants and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

15. Right of Entry. Landlord, its contractors, agents, or prospective purchasers or lessees, shall have the right to enter the leased premises during normal business hours to examine the same upon reasonable notice, either oral or written.

16. Quiet Enjoyment. Upon the observance of all Tenant's obligations of this lease, Tenant shall peaceably and quietly hold and enjoy the leased premises.

17. Surrender of Premises. At the expiration or termination of the term of this lease, Tenant shall surrender the leased premises in the same condition that the leased premises were in at the commencement of this lease, except as provided in paragraph 13, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord.

18. Assignment and Subletting. Except as provided in paragraph 3, Tenant may not

December 10, 2019
(public hearing)

assign this lease without prior written consent of Landlord. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

19. Binding on Successors/Assigns. All of the terms of this lease shall bind the successors and assigns of Landlord and Tenant, except where the assignment is ineffective due to lack of Landlord's consent.

ARTS HERNDON, INC.

By: [Signature]
Name: JOANNA CRANES ER.
Title: PRESIDENT & CEO

TOWN OF HERNDON, VIRGINIA

By: [Signature]

Lisa C. Merkel
Mayor

ATTEST:

[Signature]
Acting Town Clerk

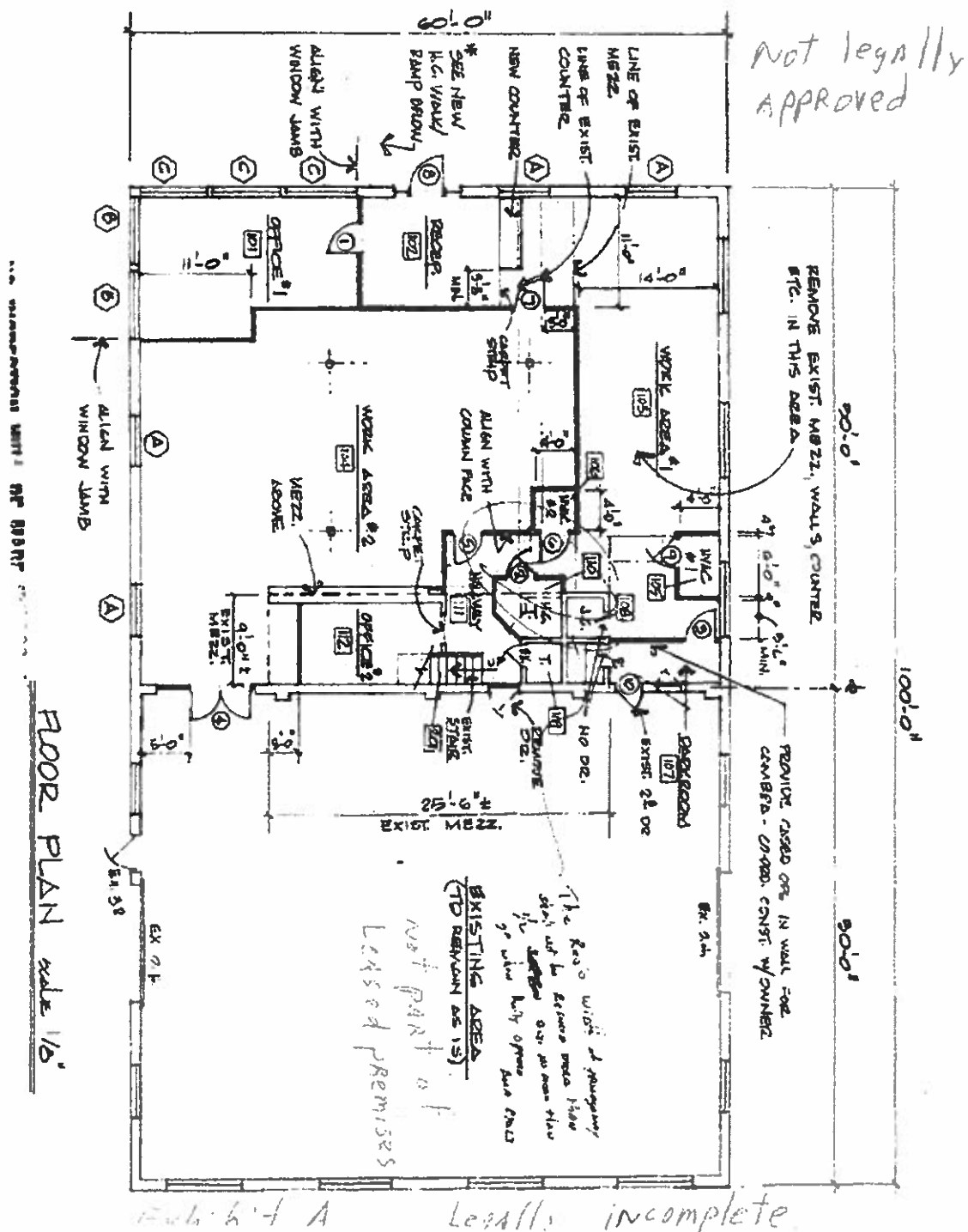
APPROVED AS TO FORM:

[Signature]
Lisa J. Yeatts
Town Attorney



December 10, 2019
(public hearing)

Exhibit A 12/10/2019



**December 10, 2019
(public hearing)**

10. Ordinance 19-O-46, to approve and authorize the Mayor to sign a Lease Agreement between the Town and Delegate Samirah for space at 397 Herndon Parkway

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing had been duly advertised in the Wednesday, November 27, 2019 issue.

Mayor Merkel opened the public hearing and called on Lesa Yeatts, Town Attorney, for the staff report.

Ms. Yeatts presented the staff report dated December 10, 2019, which is on file in the Town Clerk's office. The proposed ordinance was a lease between the town and Delegate Ibraheem Samirah, for space at 397 Herndon Parkway, Herndon, Virginia. This lease was for a two-year term and would expire on December 31, 2021. The rent for the space would be \$1.00 for the term.

Following the public hearing (there were no comments from the audience), Councilmember Friedrichs moved approval of Ordinance 19-O-46, as presented. Councilmember McKenna seconded the motion.

There were brief comments from Council.

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

Ordinance 19-O-46, Approving and authorizing the Mayor to sign a Lease Agreement between the Town and Delegate Samirah for space at 397 Herndon Parkway

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

1. The Town Council approves a lease dated December 10, 2019 by which the Town would lease to Delegate Ibraheem Samirah, space in the Town's building at 397 Herndon Parkway, Herndon, Virginia. The rent shall be \$1.00 for the term. The term shall be from January 1, 2020 through December 31, 2021. The lease may contain certain other terms agreed to by the Mayor and Town Manager.
2. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is the lease agreement b/n the town and Delegate Ibraheem Samirah dated December 10, 2019.]

**December 10, 2019
(public hearing)**

4

LEASE AGREEMENT

THIS LEASE made on the 10th day of December 2019, by and between the TOWN OF HERNDON, a municipal corporation (Landlord) and the Honorable IBRAHEEM SAMIRAH, Member of the House of Delegates (Tenant).

Recitals

Landlord is the owner of a building and premises located at 397 Herndon Parkway, Herndon, Virginia (the building).

Landlord and Tenant have agreed that Tenant will lease from Landlord, in consideration of the rent and other benefits, and under the terms and conditions specified here, a portion of the premises commonly known as part of the building at 397 Herndon Parkway, (as shown on Exhibit A, attached and incorporated by reference).

THEREFORE, the parties agree as follows:

1. **Commencement and Ending Date of Term.** Beginning January 1, 2020, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may possess the leased premises with the Tenant having the right to terminate the Lease upon 30 days prior written notice to the Landlord, and the Landlord having the right to terminate the Lease upon 90 days prior written notice to the Tenant. The term of this lease shall expire December 31, 2021.
2. **Rent.** Tenant shall pay Landlord on demand \$1.00 rent for the entire term.
3. **Use of Premises.** Tenant shall use the leased premises solely for an office for constituent services. Tenant shall have access to and from the leased premises and to the restrooms. Landlord retains for itself and its employees, agents, and invitees, a right of access through the leased premises to and from spaces. Tenant certifies to Landlord that uses of this space are consistent with the Town of Herndon Zoning Ordinance and architectural guidelines or ordinances of the Herndon Town Code.

**December 10, 2019
(public hearing)**

4. Utility Charges. Landlord shall maintain and pay the cost of all utilities (except telecommunications) on the leased premises.

5. Liability Insurance. Tenant shall keep in effect a policy of bodily injury and property damage liability insurance or a self-insurance program of the Commonwealth of Virginia with respect to the leased premises in commercially reasonable amounts, as determined by Landlord. Any policy shall name the Town of Herndon as an additional insured.

6. Hold Harmless of Landlord. Tenant shall hold harmless Landlord, its officers, agents, and employees from any and all claims, actions, damages, liability and expense, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises through the occupancy or use by Tenant.

7. Default. Tenant shall be in default upon failure to perform any term of this lease for more than five days after written notice of such failure shall have been given to Tenant or after Tenant's abandonment of the leased premises.

8. Rights and Remedies on Default. Landlord shall have the following rights on default of Tenant, which shall be cumulative, none excluding any other right allowed by this lease or by law.

a. Landlord may enter the leased premises and repossess the leased premises and remove Tenant and any others who may be occupying the leased premises and remove any property.

b. Landlord may seize, remove and sell all of the personal property and fixtures of Tenant on the leased premises or remove and store such property at the cost of and for the account of Tenant.

9. Custodial. Landlord shall provide custodial services, consisting of emptying trash

**December 10, 2019
(public hearing)**

and vacuuming, once a week for the leased premises.

10. Waste or Nuisance. Tenant shall not commit any waste or nuisance upon the leased premises.

11. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any furnishings and equipment in the leased premises in their existing condition. Tenant shall at all times keep the leased premises in good order, condition, and repair. Tenant shall maintain the leased premises in a clean and sanitary condition. If Landlord is required to make any repairs by reason of Tenant's negligent or intentional act or omission, Tenant shall pay to Landlord the cost of the repairs as additional rent within ten days after written notice. Landlord shall be responsible for roof, structural integrity of the building, and replacement and repair of utility systems related to the leased premises. Except as provided in paragraph 14, Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

12. Notification of Hazard. Tenant and Landlord shall give immediate notice to the other in case of fire, accident, or defect in the leased premises or in any fixtures or personal property comprising the leased premises.

13. Alterations and Improvements. Except as provided in this paragraph, Tenant shall not make or cause to be made any alterations to the leased premises without first obtaining Landlord's written consent.

14. Removal of Improvements and Restoration by Tenant. All alterations except lighting not necessary for normal use of the building or conformance with the Virginia Uniform Statewide Building Code made by Tenant shall remain the property of Landlord at the expiration or termination of the lease. This property will remain part of the leased premises and Tenant shall not have any

**December 10, 2019
(public hearing)**

obligation to remove it.

14. Loss and Damage. Landlord shall not be liable for any loss or damage to property of Tenant located on the leased premises. Landlord shall not be liable for any injury, death, or damage to persons or property associated with Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the leased premises. Landlord shall not be liable for any latent defect in the leased premises or in the building of which they form a part. All property of Tenant or its subtenants kept or stored on the leased premises shall be so kept or stored at the risk of Tenant or subtenants and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

15. Right of Entry. In addition to Landlord's right of access as described in paragraph 3, Landlord, its contractors, agents, or prospective purchasers or lessees, shall have the right to enter the leased premises during normal business hours to examine the same upon reasonable notice, either oral or written.

16. Quiet Enjoyment. Upon the observance of all Tenant's obligations of this lease, Tenant shall peaceably and quietly hold and enjoy the leased premises.

17. Surrender of Premises. At the expiration or termination of the term of this lease, Tenant shall surrender the leased premises in the same condition that the leased premises were in at the commencement of this lease, except as provided in paragraph 14, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord.

18. Assignment and Subletting. Tenant may not assign this lease without prior written consent of Landlord. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

**December 10, 2019
(public hearing)**

19. Binding on Successors/Assigns. All of the terms of this lease shall bind the successors and assigns of Landlord and Tenant, except where the assignment is ineffective due to lack of Landlord's consent.



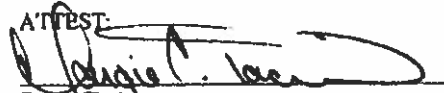
Ibraheem Samirah
Member House of Delegates

TOWN OF HERNDON, VIRGINIA

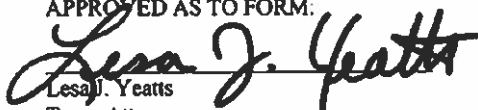
By: 
Lisa C. Merkel
Mayor



ATTEST:


Acting Town Clerk

APPROVED AS TO FORM:


Lesa J. Yeatts
Town Attorney

**December 10, 2019
(public hearing)**

11. Ordinance 19-O-47, 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

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing had been duly advertised in the Wednesday, November 27, 2019 issue.

Mayor Merkel opened the public hearing and called on Lesa Yeatts, Town Attorney, for the staff report.

Ms. Yeatts presented the staff report dated December 10, 2019, which is on file in the Town Clerk's office. The proposed ordinance was a lease between the town and Evince Analytics, Inc., for space in the town's building at 397 Herndon Parkway. This lease was for a one-year term and would expire on December 31, 2020. The rent for the space would be \$5,000 per month.

Following the public hearing (there were no comments from the audience), Councilmember Friedrichs moved approval of Ordinance 19-O-47 as presented. Councilmember McKenna seconded the motion.

There were brief comments from Council.

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

**December 10, 2019
(public hearing)**

Ordinance 19-O-47, Approving and authorizing the Mayor to sign a Third Lease Amendment between the Town and Evince Analytics, Inc., for space at 397 Herndon Parkway.

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

1. The Town Council approves a lease dated December 10, 2019 by which the Town would lease to Evince Analytics, Inc., space in the Town's building at 397 Herndon Parkway, Herndon, Virginia. The rent shall be \$5,000 per month. The term shall be from January 1, 2020 through December 31, 2020. The lease may contain certain other terms agreed to by the Mayor and Town Manager.
2. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is the lease agreement b/n the town and to Evince Analytics, Inc., dated December 10, 2019.]

**December 10, 2019
(public hearing)**

THIRD LEASE AMENDMENT

This third lease amendment dated December 10, 2019 between the Town of Herndon, Virginia ("Landlord") and Evince Analytics, Inc., a Virginia corporation ("Tenant").

PROVIDES

In consideration of the rent paid to Landlord and the leased space provided to Tenant, the parties agree that:

1. Effective January 1, 2020, the lease dated September 18, 2012, as amended June 8, 2013, as amended July 11, 2017 is amended and confirmed, with necessary changes. The term of this lease will be for 1-year, beginning January 1, 2020 and expiring December 31, 2020.
2. Effective January 1, 2020, rent shall be \$5,000 per month due on the first day of each calendar month.
3. Square footage is reduced from 4,512 sq. ft. to 3,512 sq. ft.
4. Exhibit A is deleted in its entirety and replaced with Exhibit A dated December 10, 2019 attached hereto and incorporated herein.
5. In all other respects the lease dated September 18, 2012 as amended June 8, 2013, as amended July 11, 2017 is confirmed.

EVINCE ANALYTICS, INC.

By: Thomas M. Codella
Name: Thomas M. Codella
Title: President

Additional signatures on following page

December 10, 2019
(public hearing)

TOWN OF HERNDON, VIRGINIA

By: _____

Lisa C. Merkel
Mayor



ATTEST: _____

Angela
Town Clerk

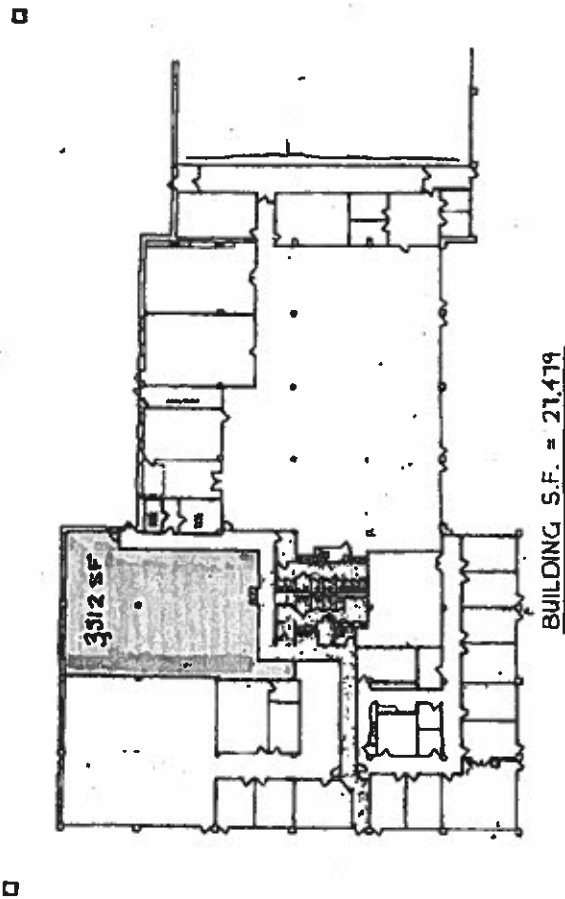
APPROVED AS TO FORM: _____

Lisa J. Yeatts
Lisa J. Yeatts
Town Attorney

December 10, 2019
(public hearing)

DECEMBER 10, 2019
EXHIBIT A

Floor Plans



BASE BUILDING 341 HERNDON PARKWAY HERNDON, VIRGINIA 2010	Arencibia Architects Inc. 703-733-0190 1345 POINT RIDGE LANE, HERNDON, VA. 2011	SCALE 1" = 30'

**December 10, 2019
(public hearing)**

12. **Resolution 19-G-71, 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**

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing had been duly advertised in the Wednesday, November 27, 2019 issue.

Mayor Merkel opened the public hearing and called on Lesa Yeatts, Town Attorney, for the staff report.

Following the public hearing (there were no comments from the audience), Councilmember Dhakal moved approval of Resolution 19-G-71, as presented. Councilmember Baker seconded the motion.

There were brief comments from Council.

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

Resolution 19-G-71, 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.

WHEREAS, the parties have entered into a Pilot Project Agreement dated June 12, 2018 and amended December 11, 2018 and December 10, 2019 for the installation of equipment and facilities and provision of services to the Town and its inhabitants, and

WHEREAS, Vivacity DC, Inc., a Delaware corporation was converted to a Delaware limited liability company and renamed Vivacity Networks LLC on August 31, 2019; and

WHEREAS, the Town of Herndon and Vivacity Networks LLC (formerly Vivacity DC, Inc.), desire to amend the Pilot Project Agreement to extend the agreement termination date to December 31, 2021.

**December 10, 2019
(public hearing)**

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that the Mayor of the Town of Herndon, Virginia, is authorized to sign and deliver this second amendment on such form approved by the Town Attorney and any other instrument necessary to evidence or effectuate this agreement.

[Note: Attached for reference is the second amendment to the lease agreement for the Pilot Project Agreement dated June 12, 2018 and amended December 11, 2018 and December 10, 2019 b/n the town and Vivacity Networks, LLC, (formerly Vivacity DC, Inc.).]

**December 10, 2019
(public hearing)**

SECOND AMENDMENT TO VIVACITY PILOT PROJECT AGREEMENT

THIS SECOND AMENDMENT dated December 10, 2019 is hereby made to the Agreement dated June 12, 2018 and amended December 11, 2018 by and between the TOWN OF HERNDON, VIRGINIA, a Virginia municipal corporation ("Town") and VIVACITY NETWORKS, LLC, formerly Vivacity DC, Inc., ("Vivacity").

1. Vivacity DC, Inc., a Delaware corporation was converted to a Delaware limited liability company and renamed Vivacity Networks, LLC on August 31, 2019.
2. The Town of Herndon and Vivacity Networks, LLC (formerly Vivacity DC, Inc.), desire to amend the Pilot Project Agreement to extend the agreement termination date to December 31, 2021.
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, including this extension of the term.

IN WITNESS WHEREOF, the parties have entered into this Second Amendment as of the day and year set forth below by the signatures of their authorized representatives below.

Vivacity Networks, LLC.

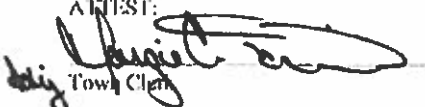
By: 
 Authorized Representative
 Name: Danny Bottoms
 Title: President & CEO
 Date: 22 Nov 2019

TOWN OF HERNDON, VIRGINIA

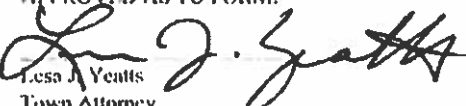
By: 
 Name: Lisa C. Merkel
 Title: Mayor



ATTEST:


 Town Clerk

APPROVED AS TO FORM:


 Lisa J. Yeatts
 Town Attorney

December 10, 2019
(public hearing)

13. **Resolution 19-G-72, 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**

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing had been advertised in the Wednesday, November 27, 2019 issue.

Mayor Merkel opened the public hearing and called on Lesa Yeatts, Town Attorney, for the staff report.

Ms. Yeatts presented the staff report, dated December 10, 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. Ms. Yeatts stated that this would be the conclusion of the construction of the pilot project and it would operate for two years as indicated in the agreement. Staff recommends approval of the proposed ordinance, as presented.

Following the public hearing (there were no comments from the audience), Councilmember del Aguila moved approval of Resolution 19-G-72, as presented. Vice Mayor Olem seconded the motion.

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

Resolution 19-G-72, 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.

WHEREAS, the parties entered into a License Agreement dated June 30, 2019 for the use of designated public property and public right-of-way, and

**December 10, 2019
(public hearing)**

WHEREAS, Vivacity DC, Inc., a Delaware corporation was converted to a Delaware limited liability company and renamed Vivacity Networks LLC on August 31, 2019; and

WHEREAS, the Town of Herndon and Vivacity Networks LLC (formerly Vivacity DC, Inc.), desire to amend the License Agreement to include an electric vehicle charging station and associated additional network and electronic equipment to operate the fiber, WiFi and smart city functionality located on public property or right-of-way of the Town.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that the Mayor of the Town of Herndon, Virginia, is authorized to sign and deliver this first amendment on such form approved by the Town Attorney and any other instrument necessary to evidence or effectuate this agreement.

[Note: Attached for reference is the first amendment to the lease agreement b/n the town and Vivacity Networks, LLC, (formerly Vivacity DC, Inc.), dated December 10, 2019.]

**December 10, 2019
(public hearing)**

FIRST AMENDMENT TO VIVACITY NONEXCLUSIVE LICENSE

THIS FIRST AMENDMENT dated this 10th day of December, 2019 is hereby made to the License dated June 30, 2019 by and between the Town of Herndon, a Virginia municipal corporation (Town) and Vivacity Networks, LLC, a Delaware limited liability company, the successor to Vivacity DC, Inc. ("Vivacity") a Delaware corporation.

WHEREAS, the parties have entered into a Pilot Project Agreement dated June 12, 2018 and amended December 11, 2018 and December 10, 2019 for the installation of equipment and facilities and provision of services to the Town and its inhabitants, and

WHEREAS, the parties have entered into a Nonexclusive License dated June 30, 2019 for the use of designated public property and public right-of-way, and

WHEREAS, Vivacity DC, Inc., a Delaware corporation was converted to a Delaware limited liability company and renamed Vivacity Networks, LLC on August 31, 2019; and

WHEREAS, Vivacity has received approval of an amendment to site plan TP R 19-10 and now desires the Town approve the use of additional Property of the Town to install and maintain facilities as specified in TP R 19-10, as amended, and the License, and

WHEREAS, this First Amendment is not a grant of any special private privilege or sale of public property; the parties hereby agree to the following terms and conditions:

1. The Pilot Project Agreement, as amended, and the License are assigned to Vivacity Networks, LLC, as the successor to Vivacity DC, Inc.

**December 10, 2019
(public hearing)**

2. All facilities and equipment to be placed and constructed for the installation and operation of a ChargePoint CT4021-GW1 electric vehicle charging station as authorized by this First Amendment shall be located in accordance with the amendment drawings to site plan TP R 19-10 (Exhibit A), attached and incorporated by reference. The electric vehicle charging station shall be owned and maintained by ChargePoint under an agreement with Vivacity for a two-year period.

3. Power to the electric vehicle charging station will be provided from an additional breaker to be installed in the existing Town panel "PL" located in the sump pump room at the Herndon Municipal Center. On a monthly basis, Vivacity will send a statement to the Town with the kwh used by the electric vehicle charging station. To align with the town's billing cycle with the utility provider, kwh readings will be as of the 21st of each month. The monthly usage statement will include a statement certifying data accuracy. The Town will then invoice Vivacity for that amount of power at the same rate it pays the electric utility provider. Vivacity will pay such invoice within thirty (30) days of receipt. Vivacity hereby certifies that the meter used to monitor kwh usage conforms to the metering accuracy requirements of NIST Handbook 44 (2016), Section 3.40 and will notify the Town in writing if the meter is recalibrated.

4. Users of the electric vehicle charging station will be charged a fee based on the amount of power used during their session. Vivacity shall set the rates based on the local market and recovery of its costs. Vivacity represents that ChargePoint will provide all customer service and billing to users of the electric vehicle charging station.

5. Additional network and electronic equipment required to operate the fiber, WiFi and smart city functionality located in the Herndon Municipal Center and not depicted on TP

**December 10, 2019
(public hearing)**

R-19-10 is hereby authorized by this License. Vivacity owns this equipment and is responsible for its maintenance. In order to do so, the Town will provide access when requested by Vivacity.

6. The new trash and recycling receptacles to be installed near pole locations L1 and C9 on concrete pads per Town specifications are hereby authorized by this License. The concrete pads were not depicted on any site plan.

7. The term of the license shall not in any event extend beyond December 31, 2021.

8. Except as specifically amended or modified herein, the terms and conditions of the License will remain in full force and effect.

December 10, 2019
(public hearing)

Vivacity Networks, LLC

By: *D. Bottoms*

Authorized Representative

Name: Danny Bottoms

Title: President & CEO

Date: 22 Nov 2019

TOWN OF HERNDON,
VIRGINIA

By: *Lisa C. Merkel*

Name: Lisa C. Merkel

Title: Mayor



ATTEST:

[Signature]
Noting Town Clerk

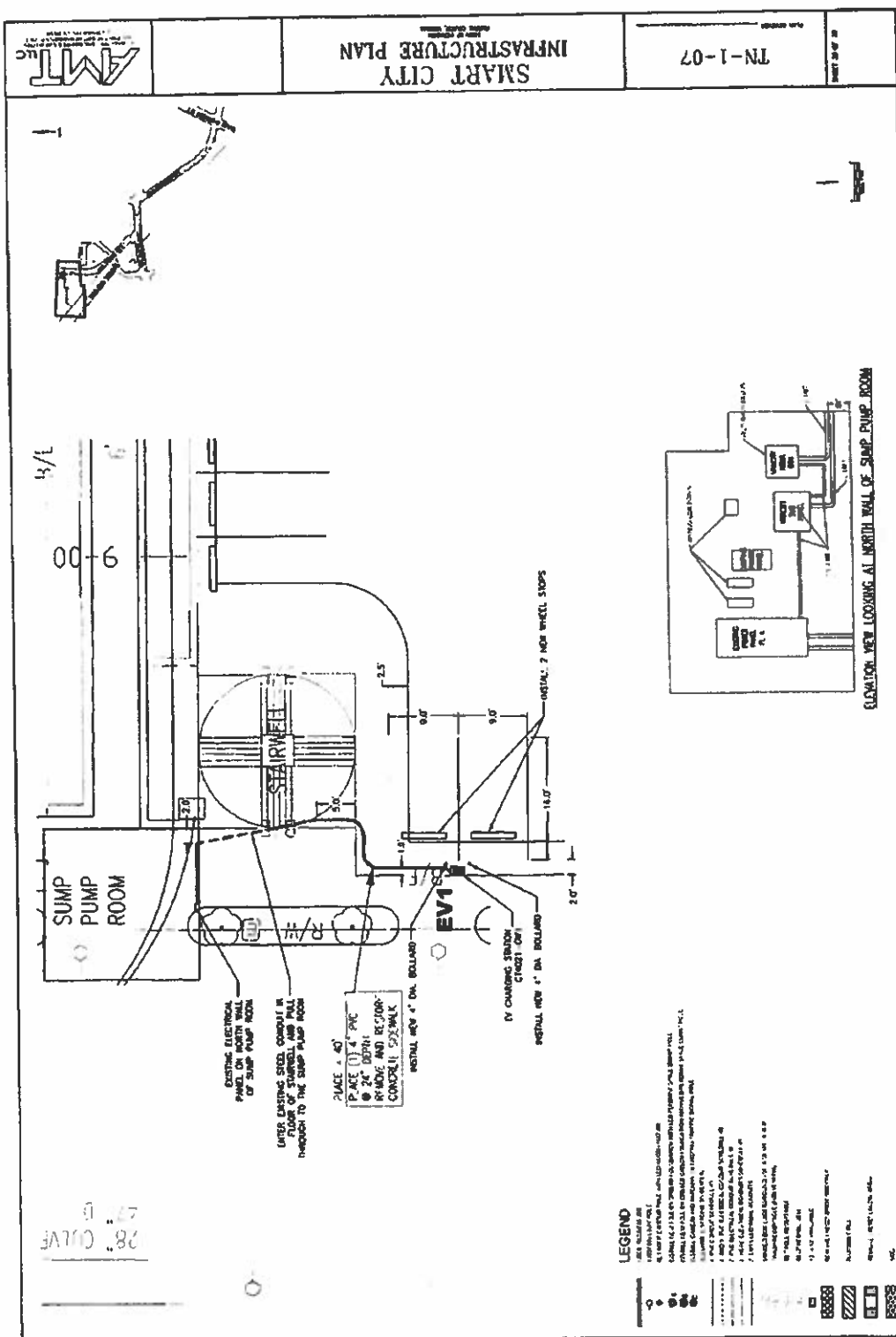
APPROVED AS TO FORM:

[Signature]
Town Attorney

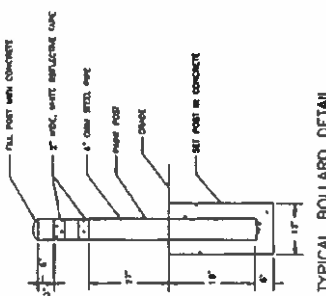
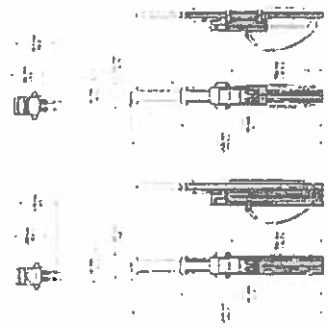
**December 10, 2019
(public hearing)**

**EXHIBIT A
Amendment to Site Plan TP R 19-10**

PERFORMANCE BOND ESTIMATE			
NO.	ITEM	QUANTITY	UNIT PRICE
1	100% PAYMENT	1	100%
2	100% PAYMENT	1	100%
3	100% PAYMENT	1	100%
4	100% PAYMENT	1	100%
5	100% PAYMENT	1	100%
6	100% PAYMENT	1	100%
7	100% PAYMENT	1	100%
8	100% PAYMENT	1	100%
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92	100% PAYMENT	1	100%
93	100% PAYMENT	1	



December 10, 2019
(public hearing)

		SMART CITY POLE & ELECTRIC VEHICLE DETAILS		TN-5-04	
 PROPOSED BOLLARD		 TYPICAL BOLLARD DETAIL			
 -charger-					
CHARGING STATION		CHARGING STATION			

**December 10, 2019
(public hearing)**

GENERAL

14. 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 November 12, 2019 public hearing]

Mayor Merkel stated that this item had been continued from the Council's meeting on November 12. She recognized John Irish, Deputy Director of Public Works; to present the staff report.

Mr. Irish 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 had approved this matter at their meeting last week. If the Council approved the proposed resolution, it would put the town in line for the available funds as listed.

There was a brief question and answer session between Councilmember Dhakal and Mr. Irish.

Councilmember McKenna moved approval of Resolution 19-G-68, as presented. Vice Mayor Olem seconded the motion.

There were brief comments from Council.

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

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.

WHEREAS, the Town of Herndon has been designated to receive funding to facilitate the design, construction, and implementation of transportation multimodal improvements in the Herndon Transit-Oriented Core "HTOC") area; and

WHEREAS, the Fairfax County Board of Supervisors approved the list of HMSAMS pedestrian and bicycle transportation projects on December 8, 2015 to be funded out of the County's Fiscal Years

**December 10, 2019
(public hearing)**

FY2015 to FY2020 Fairfax County Transportation Priorities Plan;
and

WHEREAS, the agreement is based on the level of expected project delivery and they are as follows:

Project Design, Construction and Administration Agreement:

- For the design and construction of the transportation multimodal improvement project at Herndon Parkway from W&OD Trail to Fairbrook Drive in the amount of \$3,639,000.
- For the design and construction for the transportation multimodal improvement project at Van Buren Street from the W&OD Trail to the Monroe Street Bridge in the amount of \$2,200,000.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby authorizes the Mayor to execute the agreements and any amendments thereto on behalf of the Town.

- 15. Resolution 19-G-73, 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 FY2020-2025 Six-Year Improvement Program**

Lisa Gilleran, Director of Community Development, presented the staff report and PowerPoint dated November 12, 2019, which are on file in the Town Clerk's office. She outline the requested projects, which were \$2.2 million for the East Elden Street project under RSTP; and \$700,000 for the bus bays for access to the Herndon Metrorail Station under CMAQ funding. Staff recommends approval of the proposed resolution, as presented.

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

Councilmember Dhakal moved approval of Resolution 19-G-73, as presented. Councilmember Friedrichs seconded the motion.

There were brief comments from council.

**December 10, 2019
(public hearing)**

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

Resolution 19-G-73, Authorizing two applications to the Northern Virginia Transportation Authority (NVTa) for Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) funding for Federal fiscal year 2026 and to endorse project priorities of the Virginia Department of Transportation (VDOT) Six-Year Improvement Program for fiscal years 2020 through 2025.

WHEREAS, the town's RSTP project priority, titled '*East Elden Street Improvements and Widening*' (UPC 50100), is supported by the Northern Virginia Transportation Authority (NVTa), the Transportation Planning Board of the Metropolitan Washington Council of Governments, and the Commonwealth Transportation Board of Virginia; and

WHEREAS, the East Elden Street project is included in VDOT's Six-Year Improvement Program and Washington Council of Governments - Transportation Planning Board's Constrained Long Range Plan; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008 and as amended through February 26, 2019, advises the improvement of East Elden Street; and

WHEREAS, on October 13, 1998, the Town Council adopted a resolution to provide guidance on the design for improvements to East Elden Street, between the eastern town line and the Monroe Street intersection; and

WHEREAS, on October 23, 2018, the Town Council adopted a resolution to update the prior Town Council resolutions (dated March 18, 2014 and October 13, 1998) in order to provide final guidance on the engineering design of roadway improvements along Elden Street, between the eastern town line and Monroe Street, to include bike lanes, cycle tracks and to address intermittent, localized flooding of Sugarland Run onto the roadway; and

WHEREAS, the town's CMAQ project priority is titled '*Herndon Metrorail Intermodal Access Improvements II*' (UPC 106986) for roadway, pedestrian, bike and transit enhancements that will serve transit-oriented development along Herndon Parkway; and

**December 10, 2019
(public hearing)**

- WHEREAS,** the Herndon Metrorail Intermodal Access project is included in VDOT's Six-Year Improvement Program and Washington Council of Governments - Transportation Planning Board's Constrained Long Range Plan; and
- WHEREAS,** the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008 and as amended through February 26, 2019, promotes the goal of facilitating alternative modes of transportation within the town; and
- WHEREAS,** conceptual plans, prepared by the town's transportation consultant Rummel, Klepper & Kahl (RK&K) consultants show vehicle and bus pull-off bays as well as traffic signalization, streetlights, bus shelters and intersection enhancements such as pedestrian signalization and paver crosswalks; and
- WHEREAS,** the vehicle / bus bays will provide access, via a wide ADA accessible sidewalk with streetlights, to the pedestrian entrance facility of the Metrorail Station, as per approved Dulles Corridor Rapid Transit Project - final Environmental Impact Statement; and
- WHEREAS,** the project includes roadway reconstruction as well as costs associated with relocating existing curbing, streetlights, sidewalks and underground utilities in an effort to create better pedestrian and bicycle access to the pedestrian entrance facility located on the northside of the Herndon Metrorail Station; and
- WHEREAS,** improvements are needed beyond the initial phase to include signalization and intersection enhancements, ADA accessible wide paver crosswalks, street lighting, traffic and pedestrian/bike signalization, refuge median islands, cycle track and bus shelter/transit facilities along Herndon Parkway between Van Buren Street and Spring Street.
- WHEREAS,** the town's CMAQ project will improve and integrate pedestrian and bicycle facilities within the street and transit network in concert with the Trail and Sidewalk Program and other project components of the town's Capital Improvement Program involving transportation improvements; and
- WHEREAS,** the above capital improvement projects are both included in the town's amended 2030 Comprehensive Plan and the town's adopted FY2020-FY2025 Capital Improvement Program.

**December 10, 2019
(public hearing)**

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, does hereby authorize the Town Manager to submit two applications to the Northern Virginia Transportation Authority, through the Virginia Department of Transportation, for FY2026 Federal funding for the following projects:

- a) an allocation funding request of up to \$2,200,000 in Regional Surface Transportation Program (RSTP) funding for the *East Elden Street Improvements and Widening* project (Monroe Street to Fairfax County Parkway); and
- b) an allocation funding request of up to \$700,000 in Congestion Mitigation and Air Quality (CMAQ) funding for the *Herndon Metrorail Intermodal Access Improvements* project.

BE IT FURTHER RESOLVED that the Town Council continues to support the projects included in the state adopted FY2020-2025 Virginia Department of Transportation Six-Year Improvement Program, including East Elden Street Improvements and Widening (UPC 50100), East Spring Street Widening (UPC 105521), Herndon Metrorail Intermodal Access Improvements (UPC 104328, UPC 106986), Herndon Parkway and Van Buren Street Intersection Improvements (UPC 89889), Van Buren Street Multimodal Improvements (UPC 107658), Elden Street and Monroe Street Intersection Improvements (UPC 108690), and roadway paving maintenance, milling and overlay (UPC 106979, UPC 115302, UPC 115708) projects.

CONSENT AGENDA

On motion of Councilmember Friedrichs, seconded by Councilmember McKenna, and carried by unanimous vote, the following Consent agenda items were approved, without comment. The vote was Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

16. Resolution 19-G-74, to reappoint Yung C. Kim to the Town of Herndon's Board of Zoning Appeals

BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby reappoints **Yung C. Kim** to the Board of Zoning Appeals for a five-year term ending December 31, 2024.

**December 10, 2019
(public hearing)**

- 17. Resolution 19-G-75, to reappoint Randy Jaegle as the Town of Herndon member to the Phase II Dulles Rail Transportation Improvements Tax District Advisory Board**

BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby reappoints **Randy Jaegle** as the Town of Herndon member to the Phase II Dulles Rail Transportation Improvements Tax District Advisory Board, representing an “owner or representative of an owner of real property in the Phase II District zoned or used for commercial or industrial purposes” for a four-year term expiring January 31, 2024.

- 18. Resolution 19-G-76, to appoint Erin Wolff as a “citizen” member to the Town Council’s Pedestrian and Bicycle Advisory Committee**

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby appoints **Erin Wolff** as a “citizen” member to the Town Council’s Pedestrian and Bicycle Advisory Committee to fill an unexpired a two-year term ending December 31, 2020.

- 19. Resolution 19-G-77, Award of Contract, Herndon Festival Carnival Operations – RFP 20-02**

WHEREAS, the competitive negotiation process (request for proposal) was used to solicit offers from carnival operation contractors; and

WHEREAS, the request for proposal solicited services for an initial one (1) year contract (the 2020 Herndon Festival) with an option of four (4) one (1) year renewals; and

WHEREAS, the request for proposal was published on eVA for vendors to access it and a single offer was received from Frank Joseph and Sons, Inc dba Jolly Shows, Inc.; and

WHEREAS, an evaluation committee reviewed the proposal, evaluating quality and capacity of the rides, ride ticket prices, concession and games operation; and professionalism of the carnival operations; and

WHEREAS, based on the evaluation, negotiations were conducted with the responsive carnival operation vendor; and

WHEREAS, a favorable arrangement that maintains (1) the quality of rides, (2) reasonable prices for ride tickets, and (3) maintains or improve levels of revenue, was negotiated with Jolly Shows, Inc.; and

**December 10, 2019
(public hearing)**

WHEREAS, the revenue share for the 2020 Herndon Festival will be:

- Carnival Rides:
39 percent for the first \$150,000 of gross revenue
45 percent of revenue from \$150,000 to \$200,000
50 percent above \$200,000
- Games:
20 percent of the first \$40,000 of gross revenue
25 percent of revenue above \$40,000
- Food Booth:
\$1,800 fee for each food booth (maximum of 4); and

WHEREAS, single ticket prices will be one dollar and fifty cents per ticket, with multi-ticket discount booklets, a 10 percent presale discount and special all-you-can-ride passes; and

WHEREAS, the Herndon Festival carnival operation is a revenue source for the Town, that is used to offset in part the Department of Parks & Recreation operating expenditures for the festival.

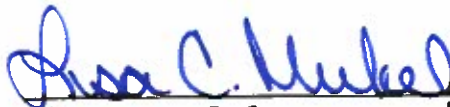
NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, that an award of contract is granted to Frank Joseph and Sons, Inc dba Jolly Shows, Inc., for the 2020 Herndon Festival, and the contract may be renewed for up to four, one-year agreements.

BE IT FURTHER RESOLVED that the Town Manager, in conjunction with the Director of Parks & Recreation, may renew the contract on an annual basis to ensure that carnival operations are providing an appropriate revenue source to offset, in part, the Parks & Recreation Department's Herndon Festival operating expenses.

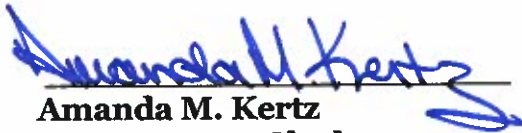
December 10, 2019
(public hearing)

ADJOURNMENT

There being no further business, the meeting adjourned at 8:35 p.m.



Lisa C. Merkel
Mayor



Amanda M. Kertz
Deputy Town Clerk

Minutes approved by Town Council: January 14, 2020.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

DECEMBER 10, 2019

Ordinance- to amend Chapter 78 (ZONING), Article III (Residential Districts), Section 78-30.1 (R-15 - Residential Single-Family District), Section 78-30.2 (R-10 - Residential Single-Family District), Section 78-30.3 (RTC - Residential Townhouse cluster District), Section 78-30.4 (RM - Residential Multi-Family District), Article V (Planned Development Districts), Section 78-50.4 (PD-R - Planned Development Residential District), Section 78-50.6 (PD-D - Planned Development Downton District), Section 78-50.7 (PD-TD - Planned Development Traditional Downtown District), Section 78-50.8 (PD-TOC - Planned Development Transit-Oriented Core District), Section 78-50.9 (PD-W - Planned Development - Worldgate District), Section 78-51.1 (PD-UR - Planned Development - Urban Residential), Article VIII (Accessory Uses), Section 78-80.4 (Standards for Specific Accessory Uses and Structures by Use Type), by adding subsection 78-80.4(U), 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. Section 78-80.2 (Table of Permitted and Allowed Accessory Uses and Structures) and Section 78-180 (Definitions) will be updated to reflect the new use. A 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). ZOTA #18-03.

Recital

In adopting this ordinance, the Town Council has considered the factors set out in §15.2-2284, Code of Virginia.

BE IT ORDAINED by the Council for the Town of Herndon that:

1. Chapter 78, Zoning Ordinance, adopted March 28, 2006, of the Herndon Town Code (2000) as amended.

Section 78-30.1 – R-15 – Residential Single-Family District

D. Accessory Uses and Structures

10 (3) *Table of permitted and allowed accessory uses in the R-15 district .*

Table 78-30.1(d)(3): Permitted and Allowed Accessory Uses R-15 KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	R-15	Supplemental Use Regulations

Short-term rental	P	§78-80.4(u)

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14 **Section 78-30.2 – R-10 – Residential Single-Family District**

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16 **D. Accessory Uses and Structures**

17 (3) *Table of permitted and allowed accessory uses in the R-10 District .*

Table 78-30.2(d)(3): Permitted and Allowed Accessory Uses R-10 KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	R-10	Supplemental Use Regulations

Short-term rental	P	§78-80.4(u)

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21 **Section 78-30.3 – RTC – Residential Townhouse Cluster District**

22

D. Accessory Uses and Structures

(3) Table of permitted and allowed accessory uses in the RTC district.

Table 78-30.3(d)(3): Permitted and Allowed Accessory Uses RTC KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	RTC	Supplemental Use Regulations

<i>Short-term rental</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-30.4 – RM – Residential Multi-Family District

D. Accessory Uses and Structures

(3) Table of permitted and allowed accessory uses in the RM district.

Table 78-30.4(d)(3): Permitted and Allowed Accessory Uses RM KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	RM	Supplemental Use Regulations

<i>Short-term rental</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-50.4 – PD-R – Planned Development Residential District

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37 **D. Accessory Uses and Structures**38 **(4) *Table of permitted and allowed accessory uses in the PD-R district.***

Table 78-50.4(d)(4): Permitted and Allowed Accessory Uses PD-R KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z = Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-R	Supplemental Use Regulations

Short-term rental	P	§78-80.4(u)

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41 **Section 78-50.6 – PD-D – Planned Development Downtown District**

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43 **D. Accessory Uses and Structures**44 **(4) *Table of permitted and allowed accessory uses in the PD-D district.***

Table 78-50.6(d)(4): Permitted and Allowed Accessory Uses PD-D KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z=Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-D	Supplemental Use Regulations

Short-term rental	P	§78-80.4(u)

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47 **Section 78-50.7 – PD-TD – Planned Development Traditional Downtown**
 48 **District**

49 ***

50 **D. Accessory Uses and Structures**

51 (4) *Table of permitted and allowed accessory uses in the PD-TD district.*

Table 78-50.7(d)(4): Permitted and Allowed Accessory Uses PD-TD		
KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z=Use Allowed Subject to Zoning Map Amendment Approval		
Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-TD	Supplemental Use Regulations

Short-term rentals	P	§78-80.4(u)

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53 ***

54 **Section 78-50.8 – PD-TOC – Planned Development Transit-Oriented Core**
 55 **District**

56 ***

57 **D. Accessory Uses and Structures**

58 (4) *Table of Accessory Uses PD-TOC.*

Table 78-50.8.F - Permitted Accessory Uses in PD-TOC		
KEY: P = Use Permitted By Right; S=Use Permitted Subject to Special Exception Approval; D = Use Permitted Subject to Development Plan Approval		
Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-TOC	See Supplemental Regulations

Short-term rentals	P	§78-80.4(u)

59

60 **Section 78-50.9 – PD-W – Planned Development Worldgate District**

61 **D. Secondary uses permitted.** The following secondary uses shall be permitted
 62 only in a PD-W district which contains one or more principal uses; only when such
 63 uses are presented on an approved Fairfax County final development plan
 64 prepared in accordance with the provisions of Article 16 of the Fairfax County
 65 Zoning Ordinance if developed prior to January 2, 2005, or on an approved town
 66 general development plan if developed after January 2, 2005, and subject to the
 67 use limitations set forth in section 78-50.90(e) below.

68 (7) *Dwellings*

69 a. *Short-term rentals in accordance with the provisions of Section 78-*
 70 *80.4(u).*

71 ***

72 **Section 78-51.1 – PD-UR – Planned Development-Urban Residential**73 **D. Accessory Uses and Structures**74 (4) *Table of permitted and allowed accessory uses in the PD-UR district.*

Table 78-51.1(d)(4): Permitted and Allowed Accessory Uses PD-UR KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z=Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-UR	Supplemental Use Regulations

Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools	P	§78-80.3(c) §78-21(f) §78-114
Short-term rentals	P	§78-80.4(u)

75

76 **Section 78-80.2 – Table of Permitted and Allowed Accessory Uses and**
 77 **Structures**

78 **C. Table of Permitted and Allowed Accessory Uses and Structures**

Table 78-80.2(dc): TABLE OF PERMITTED AND ALLOWED ACCESSORY USES & STRUCTURES KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z=Use Allowed Subject to Zoning Map Amendment Approval														
Notes: 1. A blank cell means the use is prohibited in the district; 2. Uses may be subject to use specific standards noted in the last column. ** For Permitted Accessory Uses in PD-TOC see section 78-50.78; For Accessory Uses Permitted and Allowed in PD-W see section 78-50.89														
	Residential Districts			Business Districts						Planned Development District			Suppl Reqs	
ACCESSORY USE	R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-UR	PD-TOC PD-W	See Section
School Uses in Conjunction with, and on the same site as, Religious Institution	S	S			S			S	Z	Z	Z		**	§78-80.4(r)
Short-Term Rental	P	P	P	P					P		P	P	**	§78-80.4(u)
Social Service and Similar Community Service Uses	S	S	S	S	S	S							**	§78-80.4(s)

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82 **Section 78-80.4 Standards for Specific Accessory Uses and Structures by**
 83 **Use Type.** Accessory uses and structures listed below shall comply with the following
 84 specific standards.

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U. Short-Term Rentals. Short-term rentals are permitted as an accessory use to a dwelling unit, as defined in Section 78-180, provided the following conditions are met:

(1) Zoning permit required. Prior to operating within the town, the operator of a short-term rental shall apply for and obtain a short-term rental zoning permit. No short-term rental zoning permit shall be considered unless the following documents are provided:

- a. A completed short-term rental zoning permit application provided by the town and submitted to the Zoning Administrator along with a filing fee of \$200.
- b. Two forms of identification with address displayed to establish primary residency at the location of the proposed short-term rental. Acceptable forms include a government-issued ID, mortgage or lease document, or other forms deemed acceptable by the zoning administrator.
- c. Written authorization from the property owner if the primary resident is not the property owner.
- d. A site plan indicating the number and location of off-street parking spaces.
- e. Proof of notification to the homeowners association or condo association of intention to operate a short-term rental, if applicable.
- f. A short-term rental permit shall be good for a period of two years from the date of issuance.

(2) Residency. Any operator of a short-term rental must be the primary resident of the property. For the purposes of this Section, primary resident shall mean an individual who has occupied the dwelling unit for 7 of the previous 12 months.

(3) Occupancy. The maximum occupancy during any rental period shall not exceed 6 adults, including all permanent residents, except where the Virginia Uniform Statewide Building Code allows fewer occupants.

(4) Entertainment. Events and activities including, but not limited to, luncheons, banquets, parties, amplified or acoustic concerts, weddings, meetings, fund raising, commercial or advertising activities to include filming, and any other gathering of persons other than the authorized renters, whether for direct or indirect compensation, are prohibited in association with any short-term rental. This language must be included in the advertisement for the rental of the property.

(5) Parking. Parking must be located on-site or in spaces reserved exclusively for the use of the operator of the short-term rental property.

- a. For any single-family detached residence, a minimum of 2 parking spaces are required and no more than 2 non-resident vehicles are permitted on-site during a rental period.

- b. For any townhouse or condo, a minimum of 1 parking space is required and no more than 1 non-resident vehicle is permitted on-site during a rental period.
- (6) *Contracts.* The operator of any short-term rental is prohibited from entering into more than one contract for any given night.
- a. Contract must include entertainment restrictions as described in Section 78-80.4(U)(4).
- b. Contract must include parking restrictions as described in Section 78-80.4(U)(5).
- (7) *Recreational vehicles.* Any recreational vehicle located on the lot is prohibited from being used for a short-term rental.
- (8) *Accessory dwelling units.* Short-term rentals shall be prohibited within an accessory dwelling unit.
- (9) *Limitation on nights.* The operator is limited to a maximum of 90 rental nights per year where the unit may be rented without the operator present. There is no limit on nights when the operator is present during a short-term rental.
- (10) *Safety.* Each short-term rental must have the following:
- a. A working multipurpose fire extinguisher.
- b. Interconnected smoke detectors.
- c. Carbon monoxide detector if any gas appliances or fireplaces are present.
- d. A direct means of egress outside of the structure from any sleeping room available for short-term rental.
- (11) *Noncompliance.* If the owner conducting the short-term rental violates, or if the short-term rental becomes by conduct inconsistent with any provision of this article or other ordinance, law or regulation governing use of the dwelling for a short-term rental, the zoning administrator may take action pursuant to Article XVII, Enforcement Violations and Remedies, including revoking the short-term rental zoning permit.
- (12) *Registry.* Failure to register or renew on the Short-Term Rental Registry pursuant to the Herndon Town Code (2000), shall be deemed a reason for revocation.

TABLE 78-152.2(b)(3): FEES FOR DEVELOPMENT APPLICATIONS

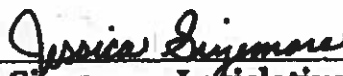
TYPE OF FEE	AMOUNT
MISCELLANEOUS ADMINISTRATIVE REVIEWS	
Request for early site occupation prior to completion of improvements in accordance with section 78-204.1 78-120.1 and 78-204.2 78-120.2 application flat fee	\$50.00
Request for early site occupation prior to completion of improvements in accordance with section 78-204.1 78-120.1 and 78-204.2 78-120.2, per inspection	\$50.00
Mobile Food Unit Preparer, Full Service Zoning Permit	\$100.00
Short-term Rental Permit	\$200.00

Section 78-180 – Definitions. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section.

“Short-term rental.” The provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy. Such unit does not include bed and breakfast establishment, boarding house, hotel (including extended stay hotels), or motels.

2. This ordinance shall become effective on February 1, 2020.

This is certified to be a true and accurate copy of Ordinance 19-O-43 adopted at a legally convened meeting of the Town Council of the Town of Herndon on December 10, 2019.


 Jessica Sizemore, Legislative Assistant

