

**TOWN OF HERNDON, VIRGINIA  
WORK SESSION AGENDA  
HERNDON COUNCIL CHAMBERS BUILDING  
765 LYNN STREET  
JANUARY 7, 2020  
7:00 P.M.**

**PRESENTATIONS**

1. Proclamation, to honor Sharon Bulova, Chairman, Fairfax County Board of Supervisors
2. Proclamation, to recognize “Nachman Day,” January 14, 2020, in honor of the 100th Anniversary of the Nachman family in Herndon
3. Certificate of Appreciation, to recognize Dr. Manuel A. Gomez Guemez, Parks & Recreation Department, on the occasion of his retirement

**PUBLIC HEARINGS**

4. Ordinance, to consider Zoning Ordinance Text Amendment ZOTA #19-02, to amend Chapter 78 (ZONING), Article III (Residential Districts), Sections 78-30.1, 78-30.2, 78-30.3 and Section 78-30.4; Article IV (Business Districts), Sections 78-40.1, 78-40.2, 78-40.3 and 78-40.4; Article V (Planned Development Districts), Sections 78-50.4, 78-50.5, 78-50.6, 78-50.7, 78-50.8 and 78-51.1; Article VI (Overlay Districts), Section 78-60.3; Article VII (Use Regulations), Section 78-71.13; Article VIII (Accessory Uses), Sections 78-80.2, 78-80.4; and Article XVIII (Definitions), Section 78-180, to revise standards for communications towers and develop standards for utility distribution or transmission poles, and to establish a maximum fee for administrative review eligible projects in Article XV (Decision-Making Authorities, Application Review, and Permitting), Section 78-152.2(b)(3) (Fees) pursuant to Virginia Code 15.2-2286(A)(6)

**GENERAL**

5. Resolution, to accept the Planning Commission's findings and recommendations of the Commission's five year review of the Comprehensive Plan, confirming the direction and providing staff with guidance for future Comprehensive Plan amendments and studies
6. Ordinance, to amend Chapter 66, Article V (Shared Mobility Devices), Section 66-106 to permit Pilot Program Agreement(s)
7. Ordinance, to amend the Code of the Town Of Herndon to add thereto a new Chapter 11 entitled Short-Term Residential Rental Registration

## **CONSENT AGENDA**

8. Resolution, to reappoint Matthew Ossolinski to the Heritage Preservation Review Board
9. Proclamation, to recognize “Herndon Town Incorporation Day,” January 14, 2020

## **DISCUSSION**

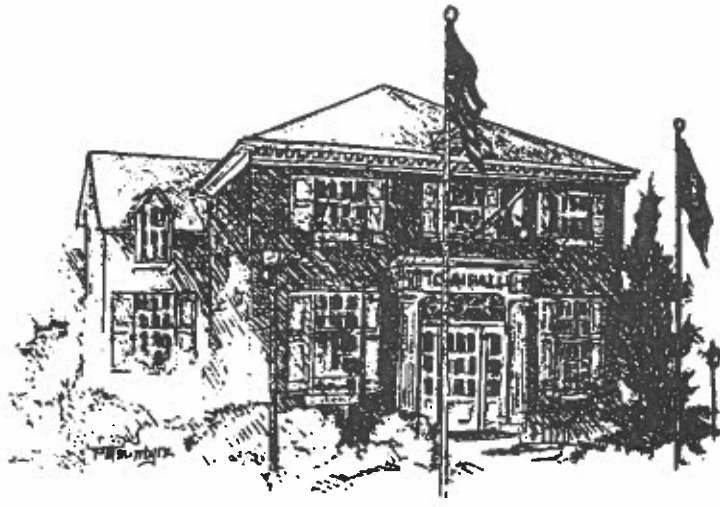
10. FY 2021 Budget Guidance (Discussion by the Town Manager)

## **ROUNDTABLE**

## **CLOSED MEETING**

A closed meeting pursuant to the Code of Virginia:

- Section 2.2-3711(A)(1) for discussion of prospective candidates relative to appointments to boards & commissions



**TOWN OF HERNDON, VIRGINIA  
PROCLAMATION  
HONORING SHARON BULOVA, CHAIRMAN  
FAIRFAX COUNTY BOARD OF SUPERVISORS**

The Mayor and Town Council of the Town of Herndon, Virginia, hereby express their sincere respect to **Sharon Bulova, Fairfax County Board of Supervisors**, who is retiring after over 30 years of dedicated service and support to the residents of Fairfax County, as Supervisor and Chairman of the Fairfax County Board of Supervisors. Ms. Bulova was first elected Chairman in a special election in 2009, and she had previously served as the Braddock District Supervisor from 1988-2009. Chairman Bulova successfully led Fairfax County through a period of dramatic growth, changes, and a major financial crisis.

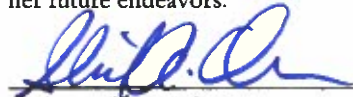
During her time on the Board of Supervisors, Chairman Bulova supported transportation initiatives and alternatives ~ including the Virginia Railway Express commuter rail, which she helped found in 1988. She also championed education; pursued environmental, historical, and cultural initiatives; pursued efforts to end homelessness, including the county's 10 Year Plan to Prevent and End Homelessness; and worked with programs for the 50 plus population. She served as Chair of the Board's all-important budget committee ~ working to build consensus across the political spectrum ~ a post she held for 20 years.

As Chairman, she oversaw the massive development in Tysons Corner and the transformation of older commercial/industrial areas throughout the county; worked with multiple levels of federal, state, and local government toward completion of the Silver Line; and focused on addressing Fairfax County's workforce housing needs ~ just to name a few ~ all while keeping Fairfax County's AAA bond rating intact.

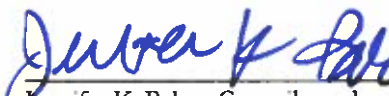
Ms. Bulova has also frequently been recognized for her contributions and leadership throughout her years of service with many awards: her recent Jinx Hazel Arts Award, Council of Government's Elizabeth & David Scull Metropolitan Public Service Award, Virginia Transit Association's Local Public Official of the Year Award, Phyllis Campbell Newsome Public Policy Leadership Award, ATFA's Lifetime Achievement Award, and the Workhouse Arts Foundation Founder's Award. Chairman Bulova was also named one of the most Powerful Women in the Metropolitan Washington Area by Washingtonian Magazine.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby express their appreciation to **Sharon Bulova, Fairfax County Board of Supervisors**, for her support on matters directly benefitting the Town of Herndon ~ attracting jobs and fostering the growth of exciting new industry sectors; the promotion of Fairfax County and the town as business and technology centers; investing in education; and protecting a variety of county services and programs that positively impact citizens' quality of life.

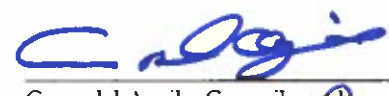
Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby thank **Sharon Bulova, Fairfax County Board of Supervisors**, for her valuable service as a community and regional leader; express admiration to Chairman Bulova for her integrity and effective leadership; and on behalf of a grateful community, wish her much success in her future endeavors.

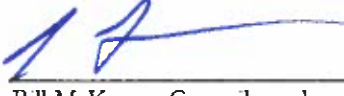
  
Sheila A. Olem, Vice Mayor

  
Pradip Dhaka, Councilmember

  
Jennifer K. Baker, Councilmember

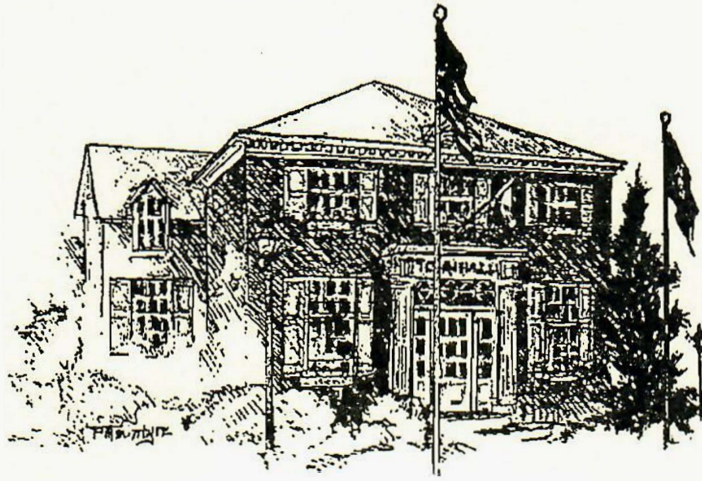
  
Signe Friedrichs, Councilmember

  
Cesar del Aguila, Councilmember

  
Bill McKenna, Councilmember

  
Lisa C. Merkel, Mayor





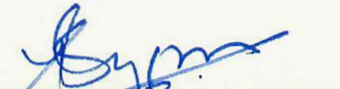
**TOWN OF HERNDON, VIRGINIA  
PROCLAMATION RECOGNIZING  
NACHMAN DAY  
JANUARY 14, 2020**

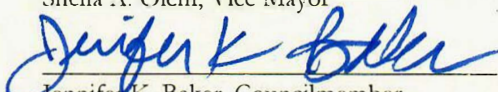
Since first arriving in Herndon in 1919 as part-owners of a store and building which would later come to be fully-owned and known as Nachmans, the Nachman family has been a constant, positive presence in the town. Throughout the past 100 years, the Nachmans have exhibited their ongoing dedication to Herndon through involvement in activities and organizations including: the Herndon Town Council; Herndon Volunteer Fire Department; Herndon Rotary Club; Herndon Masonic Lodge and Eastern Star; Herndon Business and Professional Women's Club; Herndon Optimist Club; Arts Herndon; Economic Development Authority; Board of Equalization; and many more.

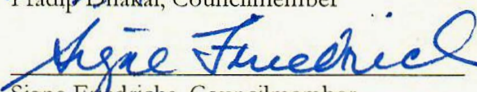
The Nachmans have also made a profound impact on the lives of students in the Herndon community by providing musical instruments, master instructors, and lessons to those who could not afford them. In that same spirit, they have been supporters of the Downtown Concert Series. Along with their encouragement of music in the community, the Nachmans have also championed the arts by commissioning two notable murals which display the town's vibrant history and by serving as the catalyst in establishing an Arts District in downtown. The Nachman Building was the first to feature an art gallery and artists-in-residence.

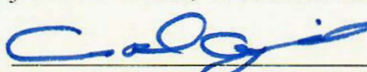
Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby express their appreciation and recognition of the Nachman family for their valued presence in the town and their innumerable contributions to the community over the past century by proclaiming **January 14, 2020** to be **Nachman Day** in the **Town of Herndon**.

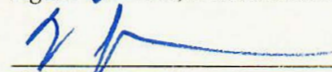
  
\_\_\_\_\_  
Sheila A. Olem, Vice Mayor

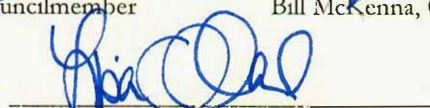
  
\_\_\_\_\_  
Pradip Dhakal, Councilmember

  
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Jennifer K. Baker, Councilmember

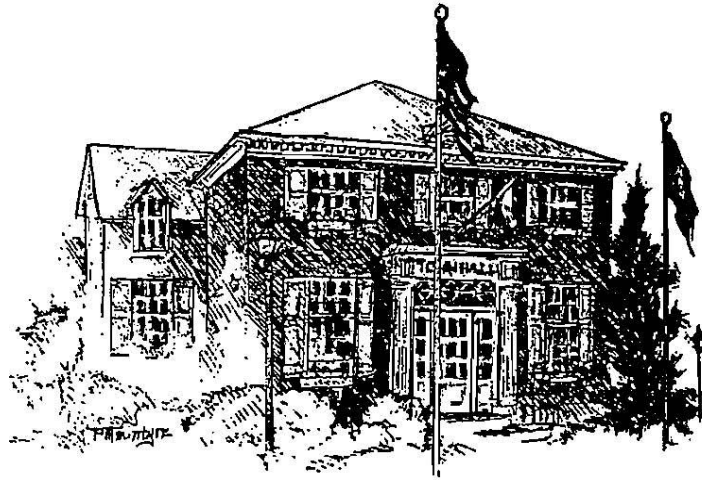
  
\_\_\_\_\_  
Signe Friedrichs, Councilmember

  
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Cesar del Aguila, Councilmember

  
\_\_\_\_\_  
Bill McKenna, Councilmember

  
\_\_\_\_\_  
Lisa C. Merkel, Mayor





# Town of Herndon, Virginia

## Certificate of Appreciation

to

**Dr. Manuel A. Gomez Guemez**

For more than 12 years of loyal and dedicated service to the  
citizens of the Town of Herndon and for your outstanding  
contributions to the quality of life in the Herndon community.

February 2007 to December 2019

/s/

Mayor Lisa C. Merkel and Members of the Herndon Town Council



## STAFF REPORT

**Town Council**

**January 7, 2020**

**Title:** ZONING ORDINANCE TEXT AMENDMENT – ZOTA #19-02 – Small Cell Amendment

**Staff Contact:** David Stromberg, AICP, Zoning Administrator  
[david.stromberg@herndon-va.gov](mailto:david.stromberg@herndon-va.gov) (703)787-7380

Elizabeth Gilleran, AICP, Director of Community Development  
[elizabeth.gilleran@herndon-va.gov](mailto:elizabeth.gilleran@herndon-va.gov) (703) 787-7380

### **Summary Information:**

The purpose of this zoning ordinance text amendment is to develop standards for small cell wireless service providers and update existing regulations for cell towers to be in alignment with the Code of Virginia. Companion amendments to the Town Code will also be required.

The Town Council resolution to bring this item before the Planning Commission was approved on October 29, 2019. This item was then discussed at the November and December set of Planning Commission meetings.

### **Background:**

The Virginia General Assembly passed legislation in 2018 (HB 1258 & SB 405) to facilitate the implementation of 5G wireless facilities in the Commonwealth. 5G is intended to provide faster internet speeds and data capacity to mobile devices. Antennae for 5G are typically located lower to the ground and much closer together than traditional antennae that provide 4G and voice services.

The new language in Section 15.2-2316.3 of the Code of Virginia defines and places limitations on Administrative Review Eligible Projects (AREP). An AREP is defined as either a new structure that is not more than 50 feet tall or a co-location on any existing structure of a wireless facility that is not a small cell facility.

The state code puts the following limitations on localities:

- A special exception requirement cannot be required for any AREP. Only administrative review is allowed.
- Application fees are limited to a maximum of \$500.
- Localities must approve or disapprove an application within 60 days.
- Zoning approval isn't required when a replacement wireless facility is within 6 feet of an existing facility and the new wireless facility is the same size or smaller.
- Zoning cannot impose a setback requirement that is more stringent than other structures, including utility poles.
- Local moratoriums on small cell facilities are prohibited.

The State Code does allow localities to limit the number of new wireless facilities in a specific location and does allow localities to require a public hearing for facilities located within a historic district.

### **Staff Analysis:**

This specific amendment is limited to the zoning ordinance and will apply to public and privately-owned parcels of land outside of the right-of-way. Separate amendments to the town code are needed to regulate small cell facilities within the right-of-way and can cross-reference some of the performance standards adopted in the zoning ordinance. Staff anticipates most proposed small cell facilities will be on new or replacement utility poles within the right-of-way but there are some utility poles located on private property and staff has received inquiries to install new small cell facilities on private property.

The zoning ordinance currently requires any communication tower, regardless of size, to obtain a special exception. A special exception for a new tower may be applied for in any zoning district but only when the lot is 50,000 square feet or larger.

The current language needs to be amended because a proposed tower that is less than 50 feet and designed to accommodate small cell equipment cannot be required to obtain a special exception per the Code of Virginia. No changes are proposed for a "traditional" cell tower that is over 50 feet. Those will still be required to obtain special exception review and approval by the Planning Commission and Town Council. The maximum height of a traditional cell tower is 125' and that is not changed in this zoning text amendment.

The zoning text amendment will include the requirements described below. These requirements will be applicable to small cell facilities located on public or private parcels of land but not to small cell facilities in the right-of-way.

A minimum lot size of one acre will be required for any installation of a small cell facility. The minimum lot size applies to all zoning districts. The one-acre requirement effectively prevents a small cell facility from being installed on nearly all lots in town that contain a single family residence. It will allow a small cell facility to be located on government-owned property (most of which are in a residential zoning district), a majority of commercially zoned properties, and the common areas of private, residential developments.

The setback requirement for a principal structure in any respective zoning district will also be required for a small cell facility. The maximum height of a small cell facility is limited to the maximum height of any other allowed principal structure in a respective zoning district.

A small cell facility proposed in the Heritage Preservation District Overlay will require approval from the Heritage Preservation Review Board (HPRB) except under a few circumstances. If a small cell facility complies with the size requirements of no more than 30 inches in height and 12 inches in diameter, is installed on an existing light pole, and there is no other visible equipment installed, then it can be reviewed administratively. All other proposed small cell facilities within the Heritage District will require a Certificate of Appropriateness from the HPRB. These requirements can apply to small cell facilities located within the right-of-way in addition to facilities proposed on parcels of land.

Outside of the Heritage District, approval will be required by the Architectural Review Board unless the same criteria for administrative approval can be met. This requirement only applies for small cell facilities located on a parcel of land. The town cannot require ARB approval for small cell facilities located in the right-of-way.

### **Town Council Alternatives:**

The following alternatives are available to the Town Council for its decision on Zoning Ordinance Text Amendment ZOTA #19-02:

1. Approve ZOTA #19-02 as presented
2. Deny ZOTA #19-02
3. Continue the public hearing on ZOTA #19-02 to a date certain
4. Refer ZOTA #19-02 back to the Planning Commission for further discussion

### **Planning Commission Recommendation:**

Staff presented this proposed text amendment at the November 18, 2019 and December 9, 2019 work sessions and at the November 25, 2019 and December 16, 2019 public hearings.

The primary discussion points were whether the minimum lot size should be 20,000 square feet or one acre (43,560 square feet) and the degree of administrative approval for small cell facilities located in the Heritage Preservation Overlay District.

The current draft before the Town Council is the version recommended by the Planning Commission on December 16, 2019.

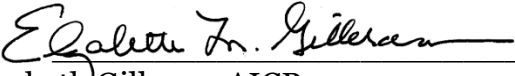
**Staff Recommendation:**

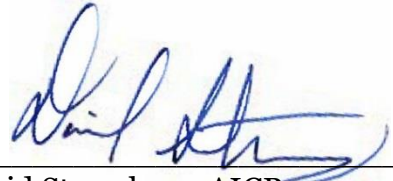
Staff recommends the Town Council approve ZOTA #19-02 in accordance with **alternative 1**.

Staff believes this language provides the most protection for town inhabitants afforded by the constraints of the Code of Virginia and also provides clear requirements for installers of small cell facilities.

**Attachment:**

1. Draft Language

  
Elizabeth Gilleran, AICP  
Director of Community Development

  
David Stromberg, AICP  
Zoning Administrator

## TOWN OF HERNDON, VIRGINIA

## ORDINANCE

\_\_\_\_\_, 2020

**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 IV (Business Districts), Section 78-40.1 (CC – Central Commercial District), Section 78-40.2 (CS – Commercial Services District), Section 78-40.3 (CO – Commercial Office District), Section 78-40.4 (O&LI – Office and Light Industrial District), Article V (Planned Development Districts), Section 78-50.4 (PD-R – Planned Development – Residential District), Section 78-50.5 (PD-B – Planned Development – Business District), Section 78-50.6 (PD-D – Planned Development – Downtown), Section 78-50.7 (PD-TD – Planned Development – Traditional Downtown), Section 78-50.8 (PD-TOC – Planned Development – Transit Oriented Core), Section 78-51.1 (PD-UR – Planned Development – Urban Residential), Article VI (Overlay Districts), Section 78-60.3 (HPO – Heritage Preservation Overlay), Article VII (Use Regulations), Section 78-71.13 (Commercial Utilities Use Category), Article VIII (Accessory Uses), Section 78-80.2 (Table of Permitted and Allowed Accessory Uses), Section 78-80.4 (Standards for Specific Accessory Uses and Structures by Type), Article XVIII (Definitions), Section 78-180 (Definitions), to revise standards for communications towers and develop standards for utility distribution or transmission poles and to establish a maximum \$500 fee for administrative review eligible projects in Article XV (Decision-Making Authorities, Application Review, and Permitting), Section 78-152.2(b)(3) (Fees) pursuant to Virginia Code 15.2-2286(A)(6).**

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

- Chapter 78 (ZONING) of the Herndon Town Code is amended and reenacted as follows.

- Section 78-30.1(c)(3) Table of Principal Permitted and Allowed Uses in the R-15 District.**

| <b>Table 78-30.1(c)(3): Principal Permitted and Allowed Uses R-15</b><br><b>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</b> |                 |                  |                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------------------|---------------------------------------------|
| <b>USE<br/>CATEGORY</b>                                                                                                                                                                                                                         | <b>USE TYPE</b> | <b>R-<br/>15</b> | <b>See<br/>Supplemental<br/>Regulations</b> |

|                      |                                                 |   |                              |
|----------------------|-------------------------------------------------|---|------------------------------|
| ***                  |                                                 |   |                              |
| Commercial Utilities | Commercial Communication Tower,<br>Freestanding | S | §78-71.18<br><i>78-71.13</i> |

**Section 78-30.1(d)(3). Table of permitted and allowed accessory uses in the R-15 district.**

| <b>Table 78-30.1(d)(3): Permitted and Allowed Accessory Uses R-15</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |          |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                      | R-15     | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                                |          |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                    | P        | §78-80.4(c)                  |
| ***                                                                                                                                                                                                                                                |          |                              |
| Commercial Communication Towers, Freestanding                                                                                                                                                                                                      | S        | §78-71.13(d)(2)(1)           |
| Home-Based Business, Including Daycare or Childcare                                                                                                                                                                                                | P        | §78-80.5                     |
| Minor Utilities                                                                                                                                                                                                                                    | P        | §78-80.4(m)                  |
| ***                                                                                                                                                                                                                                                |          |                              |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                                                                                                                                                                        | <i>P</i> | <i>§78-71.13</i>             |
| ***                                                                                                                                                                                                                                                |          |                              |

**Section 78-30.2(c)(3) Table of Principal Permitted and Allowed Uses in the R-10 District.**

| <b>Table 78-30.2(c)(3): Principal Permitted and Allowed Uses R-10</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |                                              |      |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|------|------------------------------|
| USE CATEGORY                                                                                                                                                                                                                                       | USE TYPE                                     | R-10 | See Supplemental Regulations |
| ***                                                                                                                                                                                                                                                |                                              |      |                              |
| Commercial Utilities                                                                                                                                                                                                                               | Commercial Communication Tower, Freestanding | S    | §78-71.13 <sup>13</sup>      |

**Section 78-30.2(d)(3) Table of permitted and allowed accessory uses in the R-10 District**

| <b>Table 78-30.2(d)(3): Permitted and Allowed Accessory Uses R-10</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |      |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                      | R-10 | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                                |      |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                    | P    | §78-80.4(c)                  |
| ***                                                                                                                                                                                                                                                |      |                              |
| Commercial Communication Towers, Freestanding                                                                                                                                                                                                      | S    | §78-71.13(d)(2)              |
| ***                                                                                                                                                                                                                                                |      |                              |
| <i>Small cell facilities on a utility distribution or transmission</i>                                                                                                                                                                             | P    | <i>78-71.13</i>              |

|             |  |  |
|-------------|--|--|
| <i>pole</i> |  |  |
| ***         |  |  |

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17 **Section 78-30.3(d)(3) – Table of permitted and allowed accessory uses in the RTC**  
 18 **district.**

| <b>Table 78-30.3(d)(3): Permitted and Allowed Accessory Uses RTC</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |            |                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------------------------------------------|
| <b>ACCESSORY USE</b>                                                                                                                                                                                                                              | <b>RTC</b> | <b>Supplemental Use Regulations</b>           |
| ***                                                                                                                                                                                                                                               |            |                                               |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                   | P          | §78-80.4(c)                                   |
| Commercial Communication Towers, Freestanding                                                                                                                                                                                                     | S          | <del>§78-80.4(d)(2)</del><br><i>§78-71.13</i> |
| ***                                                                                                                                                                                                                                               |            |                                               |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                                                                                                                                                                       | <i>P</i>   | <i>§78-71.13</i>                              |
| ***                                                                                                                                                                                                                                               |            |                                               |

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21 **Section 78-30.4(d)(3) – Table of permitted and allowed accessory uses in the RM**  
 22 **district**

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

| ACCESSORY USE                                                                                   | RM       | Supplemental Use Regulations |
|-------------------------------------------------------------------------------------------------|----------|------------------------------|
| ***                                                                                             |          |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i> | P        | §78-80.4(c)                  |
| Commercial Communication Towers, Freestanding                                                   | S        | §78-71.13(d)(2)              |
| ***                                                                                             |          |                              |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                     | <i>P</i> | <i>§78-71.13</i>             |
| ***                                                                                             |          |                              |

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25 **Section 78-40.1(d)(3) – Table of permitted and allowed accessory uses in the CC**  
 26 **district.**

| <b>Table 78-40.1(d)(3): Permitted and Allowed Accessory Uses CC</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |          |                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                    | CC       | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                              |          |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                  | P        | §78-80.4(c)                  |
| Commercial Communication Towers, Freestanding                                                                                                                                                                                                    | S        | §78-71.13(d)(2)              |
| ***                                                                                                                                                                                                                                              |          |                              |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                                                                                                                                                                      | <i>P</i> | <i>§78-71.13</i>             |

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**Section 78-40.2(d)(3) – Table of permitted and allowed accessory uses in the CS district.**

| <b>Table 78-40.2(d)(3): Permitted and Allowed Accessory Uses CS</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |          |                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                    | CS       | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                              |          |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                  | P        | §78-80.4(c)                  |
| ***                                                                                                                                                                                                                                              |          |                              |
| Commercial Communication Towers, Freestanding                                                                                                                                                                                                    | S        | §78-71.13(d)(2)              |
| ***                                                                                                                                                                                                                                              |          |                              |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                                                                                                                                                                      | <i>P</i> | <i>§78-71.13</i>             |
| ***                                                                                                                                                                                                                                              |          |                              |

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**Section 78-40.3(d)(3) – Table of permitted and allowed accessory uses in the CO district.**

| <b>Table 78-40.3(d)(3): Permitted and Allowed Accessory Uses CO</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |    |                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                    | CO | Supplemental Use Regulations |

|                                                                                                 |          |                  |
|-------------------------------------------------------------------------------------------------|----------|------------------|
| ***                                                                                             |          |                  |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i> | P        | §78-80.4(c)      |
| Commercial Communication Towers, Freestanding                                                   | S        | §78-71.13(d)(2)  |
| ***                                                                                             |          |                  |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                     | <i>P</i> | <i>§78-71.13</i> |
| ***                                                                                             |          |                  |

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37 **Section 78-40.4(d)(3) – Table of permitted and allowed accessory uses in the O&LI**  
38 **district.**

| <b>Table 78-40.4(d)(3): Permitted and Allowed Accessory Uses O&amp;LI</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |          |                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                          | O&LI     | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                                    |          |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                        | P        | §78-80.4(c)                  |
| ***                                                                                                                                                                                                                                                    |          |                              |
| Commercial Communication Towers, Freestanding                                                                                                                                                                                                          | S        | §78-71.13(d)(2)              |
| ***                                                                                                                                                                                                                                                    |          |                              |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                                                                                                                                                                            | <i>P</i> | <i>§78-71.13</i>             |
| ***                                                                                                                                                                                                                                                    |          |                              |

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41 **Section 78-50.4(d)(4) – Table of permitted and allowed accessory uses in the PD-R**  
 42 **district.**

| <b>Table 78-50.4(d)(4): Permitted and Allowed Accessory Uses PD-R</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |        |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                      | PD-R   | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                                |        |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                    | Z<br>P | §78-80.4(c)                  |
| Commercial Communication Towers, Freestanding                                                                                                                                                                                                      | Z      | §78-71.13(d)(2)              |
| ***                                                                                                                                                                                                                                                |        |                              |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                                                                                                                                                                        | P      | <i>§78-71.13</i>             |
| ***                                                                                                                                                                                                                                                |        |                              |

43

44 **Section 78-50.5(d)(4) – Table of permitted and allowed accessory uses in the PD-B**  
 45 **district.**

| <b>Table 78-50.5(d)(4): Permitted and Allowed Accessory Uses PD-B</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |      |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                      | PD-B | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                                |      |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                    | Z    | §78-80.4(c)                  |

|                                                                             |          |                  |
|-----------------------------------------------------------------------------|----------|------------------|
|                                                                             | <i>P</i> |                  |
| ***                                                                         |          |                  |
| Commercial Communication Towers, Freestanding                               | Z        | §78-71.13(d)(2)  |
| ***                                                                         |          |                  |
| <i>Small cell facilities on a utility distribution or transmission pole</i> | <i>P</i> | <i>§78-71.13</i> |
| ***                                                                         |          |                  |

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48 **Section 78-50.6(d)(4) – Table of permitted and allowed accessory uses in the PD-D**  
 49 **district.**

| <b>Table 78-50.6(d)(4): Permitted and Allowed Accessory Uses PD-D</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |                      |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                      | PD-D                 | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                                |                      |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                    | <i>Z</i><br><i>P</i> | §78-80.4(c)                  |
| ***                                                                                                                                                                                                                                                |                      |                              |
| Commercial Communication Towers, Freestanding                                                                                                                                                                                                      | Z                    | §78-71.13(d)(2)              |
| ***                                                                                                                                                                                                                                                |                      |                              |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                                                                                                                                                                        | <i>P</i>             | <i>§78-71.13</i>             |
| ***                                                                                                                                                                                                                                                |                      |                              |

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52 **Section 78-50.7(d)(4) – Table of permitted and allowed accessory uses in the PD-**  
 53 **TD district.**

| <b>Table 78-50.7(d)(4): Permitted and Allowed Accessory Uses PD-TD</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |                          |                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                       | PD-TD                    | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                                 |                          |                              |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                     | <del>Z</del><br><i>P</i> | §78-80.4(c)                  |
| ***                                                                                                                                                                                                                                                 |                          |                              |
| Commercial Communication Towers, Freestanding                                                                                                                                                                                                       | Z                        | §78-71.13(d)(2)              |
| ***                                                                                                                                                                                                                                                 |                          |                              |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                                                                                                                                                                         | <i>P</i>                 | <i>§78-71.13</i>             |
| ***                                                                                                                                                                                                                                                 |                          |                              |

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56 **Section 78-50.8(d)(4) – Table of accessory uses PD-TOC.**

| <b>Table 78-50.8(d)(4): Permitted and Allowed Accessory Uses PD-TD</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |              |                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------------------|
| ACCESSORY USE                                                                                                                                                                                                                                       | PD-TD        | Supplemental Use Regulations |
| ***                                                                                                                                                                                                                                                 |              |                              |
| Antennae of all kinds (except commercial communication                                                                                                                                                                                              | <del>P</del> | §78-80.4(c)                  |

|                                                                             |          |                  |
|-----------------------------------------------------------------------------|----------|------------------|
| towers, freestanding) <i>co-location</i>                                    | <i>P</i> |                  |
| ***                                                                         |          |                  |
| <i>Small cell facilities on a utility distribution or transmission pole</i> | <i>P</i> | <i>§78-71.13</i> |
| ***                                                                         |          |                  |

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59 **Section 78-51.1(d)(4) – Table of permitted and allowed accessory uses in the PD-**  
60 **UR district.**

| <b>Table 78-51.1(d)(4): Permitted and Allowed Accessory Uses PD-UR</b><br><b>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br>Uses may be subject to use specific standards as noted in the last column |                      |                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------------------------|
| <b>ACCESSORY USE</b>                                                                                                                                                                                                                                | <b>PD-UR</b>         | <b>Supplemental Use Regulations</b> |
| ***                                                                                                                                                                                                                                                 |                      |                                     |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i>                                                                                                                                                     | <i>Z</i><br><i>P</i> | §78-80.4(c)                         |
| ***                                                                                                                                                                                                                                                 |                      |                                     |
| <i>Small cell facilities on a utility distribution or transmission pole</i>                                                                                                                                                                         | <i>P</i>             | <i>§78-71.13</i>                    |
| ***                                                                                                                                                                                                                                                 |                      |                                     |

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63 **Section 78-60.3(g)(2) – Exemptions from COA.** The following minor development,  
64 which has been determined not to have permanent effects on the character of the heritage  
65 preservation district, is exempted from the requirements of this section. In the event the scope  
66 or nature of the development changes during the improvement process, the zoning  
67 administrator shall have the authority to order all work to be stopped and that an appropriate  
68 application for a certificate of appropriateness be filed.

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- g. *Small cell facilities on a utility distribution or transmission pole that comply with the provisions 78-71.13(d)(3)(a).*

- gh Similar development determined by the zoning administrator not to have permanent effects on the character of the HPD.

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### Section 78-71.13. – Commercial Utilities Category.

- (a) *Characteristics.* The commercial utilities use category includes major utilities, which are infrastructure services providing regional or community-wide service. ~~Communication towers also are a type of utility.~~ Utility uses generally do not regularly have employees at the site. Services may be publicly or privately provided. Accessory uses may include parking and control, monitoring, or transmission equipment.

- (b) *Example.* Types of major utilities include water towers, waste treatment facilities; electrical substations; and maintenance/storage yards. ~~Examples of communication infrastructure include facilities for transmitting wireless phones and pager services, and television and radio broadcasting equipment.~~

- (c) *Similar use types, accessory uses and prohibited use types.* All uses shall comply with all applicable standards in this chapter, including Article XIII, Performance Standards. In addition, the following standards shall apply:

- (1) *Offices.* ~~Utility offices are in the category of offices.~~ *Offices for non-government utilities shall meet the standards of Section 78-71.7.*

- (2) *Support facilities.* Ordinary on-site poles, *utility* lines, pipes, transformers, rights-of-way, and stormwater *bmp* retention and detention facilities necessary to meet the needs of *principal* uses on the *a* site are considered accessory uses.

- (3) *Government facilities and utilities.* Government facilities and government-owned or maintained utilities are in the category of government facilities. *Shall meet the standards of Section 78-71.3.*

- (4) *Minor utilities.* Minor utilities such as water and sewage pump stations *for water or sewer, or stormwater bmps*; ~~stormwater retention and detention facilities; roof-mounted communications towers, poles, or antennae not exceeding 15 feet above the rooftop and related ground facilities erected on water tanks or water tank sites; and telephone exchanges~~ are considered accessory uses. See Article VIII, Accessory Uses and Structures.

- (d) *Commercial utilities category specific use standards.* ~~All uses shall comply with all applicable standards in this chapter, including Article XIII, Performance Standards. In~~

addition *to the applicable requirements in this chapter*, the following standards shall apply:

~~(1) — *Electrical power facility, substation, and transmission stations*. The zoning administrator may require that an electrical power facility, substation, or transmission station shall comply with the following standards:~~

~~a. — *Proximity*. The electrical power facility, substation, or transmission station shall be within reasonable proximity of the area to be served by the facility.~~

~~b. — *Setback, screening and buffering*. The electrical power facility, substation, or transmission station shall provide additional setbacks, screening and buffering around the perimeter of the proposed use if it is deemed necessary by the zoning administrator to ensure land use compatibility with surrounding uses.~~

~~(2)~~*(1) Communication towers; and monopoles. Communication towers and monopoles between 50 feet and 125 feet other telecommunication facilities.* Communication towers, monopoles, and other mobile or land-based telecommunication facilities including non-staffed equipment cabinets or structures shall meet the following standards:

a. *Material and color*. Except for antennas completely enclosed within a structure, all antennas and their supporting mounts shall be of a material or color that closely matches and blends with the structure on which it is mounted.

b. *Advertising*. No commercial advertising or signs shall be allowed on any monopole, tower, antenna, antenna support structure, or related equipment cabinet or structure.

c. *Additions, changes and modifications*. If any additions, changes or modifications are to be made to monopoles or towers, the building official shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change, or modifications conforms to structural wind load and all other requirements of the Virginia Uniform Statewide Building Code.

d. *Lighting, signals and illumination*. No signals, lights or illumination shall be permitted on ~~an antenna~~ *a tower or monopole* unless required by the Federal Communications Commission, the Federal Aviation Administration or the town, provided, however, that on all antenna structures which exceed 100 feet in height, a steady red marker light shall be installed and operated at all times, unless the zoning administrator waives the red marker light requirement upon a determination by the Fairfax County Police Department that such marker light is not necessary

for flight safety requirements for police and emergency helicopter operations. All such lights shall be shielded to prevent the downward transmission of light.

~~e. —Location on existing structures as accessory use. Antennas may be located on existing buildings or structures, to include existing towers and poles, as an accessory use. See section 78-80.4(c).~~

~~f.~~ *Removal.* All antennas and related equipment cabinets or structures shall be removed within 120 days after such antennas or related equipment cabinets or structures are no longer in use.

~~g.~~ *Special exception required for freestanding facilities.* Freestanding communication towers, ~~and~~ *and* monopoles, ~~and other structures designed to hold telecommunication antennae or microwave dishes (or both)~~ shall be permitted in conjunction with non-staffed equipment cabinets or structures by special exception within all zoning districts and within planned developments. ~~when approved initially or by amendment when the land on which such facility is located is owned or operated by a public entity or governmental authority. Such land includes, but would not be limited to, public parks, public schools, fire stations, police stations, government office and service buildings, public recreational facilities, and cemeteries.~~ Any such use shall comply with the following standards:

- ~~1. Towers, and monopoles, and other supporting structures with attached antennae or dishes may exceed the maximum permitted building height, but shall not exceed a maximum overall height of 125 feet over grade;~~
- ~~2. Panel style antennas attached to towers, monopoles, or other supporting structures shall not exceed 108 inches in height and 24 inches in width.~~
- ~~3. Dish style antennas attached to towers, monopoles, and other supporting structures shall not exceed three feet in diameter.~~
- ~~4. Related non-staffed equipment cabinets or structures for each telecommunications provider shall not exceed 12 feet in height or a total of 500 square feet in gross floor area per telecommunications provider. Such structures shall be in accordance with the dimensional standards of the zoning district in which they are located.~~
- ~~5. All equipment shall be screened with an opaque constructed solid fence or wall. Such fence or wall shall be in accordance with the standards of this chapter and shall be further screened by an~~

181 evergreen hedge with a minimum height of no less than 48 inches  
 182 over grade. *in accordance with Section 78-114.*

183 6. Where reasonably practicable and appropriate, as determined by the  
 184 zoning administrator using recognized standards, antennas  
 185 attached to towers, monopoles, and other supporting structures  
 186 shall be constructed in a manner as to reduce their visual impact.  
 187 This goal shall be achieved through screening or applied stealthing  
 188 or camouflaging methods.

189 7. Existing light poles and stanchions may be replaced to allow for  
 190 collocation of antennas and such replacement structures may be  
 191 increased in height up to an overall height not to exceed 125 feet  
 192 over grade.

193 8. Within all residential zoning districts, towers ~~and~~ monopoles, ~~and~~  
 194 ~~other supporting structures with attached antennae or dishes~~ shall  
 195 be located on parcels of no less than 50,000 square feet in total  
 196 area. Such structures shall be placed at a distance of no less than  
 197 one foot for every foot of height from abutting lot lines in  
 198 residential zoning districts.

199 (2) *Antennae co-location. Antenna co-location onto an existing structure or utility*  
 200 *distribution or transmission pole must comply with the accessory structure*  
 201 *standards of Section 78-80.4(c)(3). For the purposes of this article, the*  
 202 *replacement of a utility distribution or transmission pole of the same size or*  
 203 *smaller and within 6 feet of the existing pole is not considered a new structure.*

204 (3) *Small Cell Facilities on a new utility distribution or transmission pole less than*  
 205 *50 feet. Any new utility distribution or transmission pole of less than 50 feet in*  
 206 *height above grade and designed to support small cell facilities is an*  
 207 *administrative review-eligible project (AREP) as defined by Section 15.2-2316.3*  
 208 *of the Code of Virginia. An AREP is subject to approval by the zoning*  
 209 *administrator and shall comply with the following standards:*

210 a. *Heritage preservation review. Small cell facilities in the Heritage*  
 211 *Preservation Overlay are subject to the following:*

212 1. *Certificate of Appropriateness. A certificate of appropriateness*  
 213 *must be obtained from the Heritage Preservation Review Board*  
 214 *unless all of the following conditions are met.*

215 (i) *The antenna is attached to an existing site light pole.*

216 (ii) *The antenna does not exceed 30 inches in height or 12*  
 217 *inches in diameter and is mounted flush, in-line with, or*  
 218 *on top of the pole.*

- 219 (iii) The antenna is painted to match the color of the existing  
220 site light pole.
- 221 (iv) No additional equipment other than the antenna is placed  
222 on the light pole.
- 223 (v) Support equipment is installed underground or  
224 camouflaged inside the pole or within a previously  
225 approved site furnishing and approved by the zoning  
226 administrator.
- 227 b. Architectural review. Small cell facilities outside of the Heritage  
228 Preservation Overlay must receive approval by the Architectural Review  
229 Board unless the following conditions are met:
- 230 1. The antenna is attached to an existing site light pole.
- 231 2. The antenna does not exceed 30 inches in height or 12 inches in  
232 diameter. No portion of the antenna may extend beyond 18  
233 inches from the side of the pole.
- 234 3. The antenna is painted to match the color of the light pole.
- 235 4. No additional equipment other than the antenna is placed on the  
236 light pole.
- 237 5. Support equipment is installed underground or camouflaged  
238 inside the pole or within a site furnishing approved by the  
239 administrator or screened pursuant to the provisions of Section  
240 78-114.
- 241 c. Setbacks. Small cell facilities, including ground-mounted equipment,  
242 must comply with the minimum setback provisions of the underlying  
243 zoning district.
- 244 d. Lot size. Within all zoning districts, a minimum lot size of one acre is  
245 required.
- 246 e. Height. The maximum height of a small cell facility, including antenna,  
247 shall not exceed the maximum permitted height of a by-right principal  
248 use of the underlying zoning district.
- 249 f. Wiring, cables, and conduit. All wiring, cables, and conduits must be  
250 located in a fully enclosed structure or match the color of the utility or  
251 distribution transmission pole.
- 252 g. Removal. All antennas and related equipment, to include ground-  
253 mounted equipment, must be removed within 120 days after such  
254 antennas or related equipment are no longer in use.

255 **Section 78-80.2(c) – Table of permitted and allowed accessory uses and structures.**  
 256 The Table of Permitted and Allowed Accessory Uses and Structures, Table 78-80.2(c), identifies  
 257 the uses permitted within base districts. (See also Section 78-70.2(d): Table of Principal  
 258 Permitted and Allowed Uses, and Table 78-90.1(b), Allowed Temporary Uses and Structures;  
 259 See also use specific standards in Section 78-80.4).

|                                                                                                 |                                                                                                                                                                                                                                                                                                |          |          |          |                    |          |          |          |          |                              |                       |           |                        |                   |
|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------|----------|--------------------|----------|----------|----------|----------|------------------------------|-----------------------|-----------|------------------------|-------------------|
|                                                                                                 | <b>Table 78-80.2(d): TABLE OF PERMITTED AND ALLOWED ACCESSORY USES &amp; STRUCTURES</b><br><b>KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</b><br><b>Z=Use Allowed Subject to Zoning Map Amendment Approval</b>                                         |          |          |          |                    |          |          |          |          |                              |                       |           |                        |                   |
|                                                                                                 | <b>Notes:</b> 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.<br>** 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<br>15                                                                                                                                                                                                                                                                                        | R<br>10  | R<br>TC  | RM       | CC                 | CS       | CO       | O&<br>LI | PD-<br>R | PD-<br>B                     | PD-<br>TD<br>PD-<br>D | PD-<br>UR | PD-<br>TOC<br>PD-<br>W | See<br>Section    |
|                                                                                                 | ***                                                                                                                                                                                                                                                                                            |          |          |          |                    |          |          |          |          |                              |                       |           |                        |                   |
| Antennae of all kinds (except commercial communication towers, freestanding) <i>co-location</i> | P                                                                                                                                                                                                                                                                                              | P        | P        | P        | P                  | P        | P        | P        | Z        | Z                            | Z                     | Z         | **                     | §78-80.4(c)       |
|                                                                                                 | ***                                                                                                                                                                                                                                                                                            |          |          |          |                    |          |          |          |          |                              |                       |           |                        |                   |
| Commercial Communication Towers, Freestanding                                                   | S                                                                                                                                                                                                                                                                                              | S        | S        | S        | S                  | S        | S        | S        | Z        | Z                            | Z                     | Z         | **                     | §78-71.13 (d)(21) |
|                                                                                                 | ***                                                                                                                                                                                                                                                                                            |          |          |          |                    |          |          |          |          |                              |                       |           |                        |                   |
| <i>Small cell facilities</i>                                                                    | <i>P</i>                                                                                                                                                                                                                                                                                       | <i>P</i> | <i>P</i> | <i>P</i> | <i>P</i>           | <i>P</i> | <i>P</i> | <i>P</i> | <i>P</i> | <i>P</i>                     | <i>P</i>              | <i>P</i>  | <i>**</i>              | <i>§78-</i>       |

261

262     **Section 78-80.4 – Standards for specific accessory uses and structures by use type.**

264

(c) Antenna of all kinds, except commercial communication towers, freestanding. The following standards are adopted to comply with applicable state and federal law, including the Federal Telecommunications Act of 1996 *and the “Spectrum Act”*, and to control the location and screening of antennae to mitigate impact on surrounding properties.

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(3) Commercial antennae. Antennae may be located on existing structures in conformance with the applicable provisions of section 78-71.12(d)(2); communication towers, monopoles, and other mobile or land-based telecommunication facilities. *provided the following standards are met:*

275 a. All antenna, including canisters, must match the color of the structure on  
276 which they are located.

277                    *b.      Roof-mounted arrays shall not be visible from a public right-of-way.*

c. *Must receive a Certificate of Appropriateness when located within the Heritage Preservation Overlay and visible from a public right-of-way.*

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281 **Table 78-152.2(b)(3) – Fees for development applications**

| TABLE 78-152.2(b)(3): FEES FOR DEVELOPMENT APPLICATIONS |        |
|---------------------------------------------------------|--------|
| TYPE OF FEE                                             | AMOUNT |
| ***                                                     |        |

| MISCELLANEOUS ADMINISTRATIVE REVIEWS                   |                 |
|--------------------------------------------------------|-----------------|
| <i>Administrative review eligible projects (AREPs)</i> | <i>\$500.00</i> |
| ***                                                    |                 |

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284 **Section 78-180 - Definitions**

285

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286 ~~Antennae(except commercial communication antennae).~~ Any structure or device used to  
 287 collect or radiate electromagnetic waves, including both directional antennas, such as panels,  
 288 microwave dishes and satellite dishes, and omni-directional antennas, such as whips, *Any*  
 289 *communications equipment that transmits or receives electromagnetic radio signals used in*  
 290 *the provision of any type of wireless communications services,* but not including satellite earth  
 291 stations.

292

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293 *Co-locate/Co-location. To install, mount, maintain, modify, operate, or replace a wireless*  
 294 *facility on, under, within, or adjacent to a base station, building, existing structure, utility*  
 295 *pole, or wireless support structure.*

296 *Commercial communication tower. See "communication tower, freestanding." or*  
 297 *"communication tower, roof-mounted."*

298

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299 *Communication tower, freestanding.* A monopole or lattice structure erected on the ground  
 300 that:

- 301 (1) May be supported by guy wires, ground anchors or other means of support;
- 302 (2) May transmit or receive signals by radio, electromagnetic, optical, or other means;
- 303 (3) Is used by commercial, governmental, or other public or quasi-public users;
- 304 (4) Does not include private home use of satellite dishes and television antennas, or
- 305 amateur radio operators as licensed by the Federal Communications Commission;
- 306 (5) Is non-staffed;
- 307 (6) May include antennas, microwave dishes, horns or similar types of equipment, towers
- 308 or similar accessory structures supporting such equipment; ~~and~~
- 309 (7) May include an equipment cabinet and a wall or security barrier; *and*
- 310 *(8) Is 50 feet or greater in height or otherwise not defined as a small cell facility.*

311 *Communication tower, roof-mounted.* A structure placed on a building used primarily for  
 312 the support of cellular telephone technology, broadcast and/or receiving equipment and utilized  
 313 by commercial, governmental, or other public or quasi-public users. A communication tower

does not include private home use of satellite dishes and television antennas, or amateur radio operators as licensed by the Federal Communications Commission. *See "co-locate/co-location."*

*Communication/transmission warehousing.* A facility where computer hard drives are stored for web hosting or other mass storage of electronic information, also known as "data warehousing," or an electronic switching center for telecommunications. A communication/transmission warehousing use is characterized by structures that are primarily occupied by technical and electronic equipment, with a small number of employees present to service the equipment. Traffic to and from a communication/transmission warehousing use typically involves minimal vehicle traffic for day-to-day operations, with fiber optic cables or other electronic communications media instead serving as the primary means of connecting the functions of the use to customers and others.

\*\*\*

*Small cell facility. A type of utility distribution or transmission pole that meets both of the following qualifications:*

*(1) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet, and;*

*(2) All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as established by the Federal Communications Commission. The following equipment is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.*

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*Telecommunication switching station. See "communication/transmission warehousing." A principal structure(s) primarily occupied by technical and electronic equipment for the processing of telecommunications equipment.*

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*Utility distribution or transmission pole. A ground mounted self-supported or guy wire-supported vertical structure made of fabricated metal, treated wood, or concrete used to elevate electrical and communication distribution lines, antennas, wireless facilities, small cell facilities, and related facilities and equipment, whose primary function is the support of wires, conductors, and associated apparatus used for the distribution of electrical energy, communication signals, or other similar utilities.*

*Utilities, major.* Infrastructure services providing regional or community-wide service. Major utilities include water towers; wastewater treatment plants; potable water plants; and public transit park and ride facilities; major electrical transmission wires, fiber optic cable, and electrical substations.

*Utilities, minor.* Infrastructure services that need to be located in or near the neighborhood where the service is provided. Minor utilities include water and sewage pump stations;

stormwater retention and detention facilities; ~~ordinary poles, lines, and~~ pipes for local distribution; transformers; ~~rights-of-way and utility easements~~; telephone exchanges; and surface transportation stops.

*Utility strip.* A vegetated strip of ground typically located between the sidewalk and the back of curb or edge of pavement of a public or private street. The utility strip is usually intended for the placement of street trees and underground or above ground utilities.

~~*Utility related maintenance and storage yards.* Outdoor storage accessory to a major or minor utility.~~

\*\*\*

2. This ordinance shall be effective on and after the date of its adoption.



## **STAFF REPORT**

**Town Council**

**January 7, 2020**

### **Title:**

Resolution accepting and affirming the Planning Commission's findings on the five year review of the comprehensive plan, including priorities for future plan amendments.

### **Staff Contact:**

Dana E. Heiberg, Senior Planner  
(703) 787-7380  
dana.heiberg@herndon-va.gov

### **Description:**

The Planning Commission reviewed the town's comprehensive plan to make a determination concerning the status of the plan and potential future amendments. Section 15.2-2230 of the Virginia Code states that at least once every five years the plan shall be reviewed by the local planning commission to determine whether it is advisable to amend the plan.

Since the August 12, 2008 adoption of the Town of Herndon 2030 Comprehensive Plan, Planning Commission review has resulted in seven plan amendments recommended by the commission and subsequently adopted by Town Council. During the past year the commission has engaged the community in a variety of forums to obtain input on the plan as part of the five year review process.

### **Fiscal Impact:**

The review of the comprehensive plan has no direct fiscal impact. The plan itself addresses a wide variety of topics that may have fiscal impact over time, especially the content affecting how land throughout the town is developed or conserved. The private sector response to redevelopment opportunities within targeted areas provided by the plan may cause impacts to include increased revenues as well as increased demand for services. The town completed infrastructure cost estimates for water and wastewater treatment as part of the plan amendment process related to the three major area plans listed below (Metrorail Station Area Plan, Downtown Master Plan, South Elden Area Plan). Traffic impact studies were also undertaken.

### **Alternatives:**

1. Approval of the draft resolution affirming the policies and findings of the Planning Commission as included in the commission's resolution of December 16, 2019 and affirming the priorities for future plan amendments as recommended by the commission.
2. Denial of the draft resolution and guidance to the commission regarding appropriate changes for their review and consideration.
3. Denial of the draft resolution.

### **Staff Recommendation:**

Approve the resolution per Alternative 1.

### **Staff Comments:**

The town adopted the 2030 Comprehensive Plan on August 12, 2008. Through community-driven planning processes, the planning horizon has been extended well beyond 2030 in relation to areas of focus. To date, the following amendments have been adopted by Town Council after Planning Commission review:

- **Downtown Master Plan;** Resolution 10-G-68 of February 22, 2011
- **Downtown Streetscape Map;** Resolution 11-G-59 of September 27, 2011
- **Metrorail Station Area Plan;** Resolution 11-G-65 of February 28, 2012
- **Major Street Network Map;** Resolution 15-G-02 of January 13, 2015 (extension of Fairbrook Drive)
- **Cycle Track on Herndon Parkway;** Resolution 17-G-69 of September 12, 2017
- **South Elden Area Plan;** Resolution 19-G-22 of February 12, 2019
- **South Elden Street Design Concept;** Resolution 19-G-26 of February 26, 2019

Over recent months the staff has conducted outreach to engage the public and obtain discussion and input about the comprehensive plan. This effort has included the presentation and discussion of the plan in front of several committees including the Herndon Committee of the Dulles Regional Chamber of Commerce, the Herndon Economic Development Advisory Committee, the Youth Advisory Committee and the Pedestrian and Bicycle Advisory Committee. Outreach was also conducted at several Farmer's Market events. The attached summary details many points and issues raised during the public input meeting, the Herndon Youth Advisory Committee as well as through electronic mail and other communication.

### **Attached Documents:**

1. Draft Town Council Resolution for January 14, 2019
2. Planning Commission Resolution adopted December 16, 2019

3. Summary of Input Received at September 25, 2019 Public Meeting (4 pages)

**Staff:**

*Dana E. Heiberg*

Dana E. Heiberg, Senior Planner

*Elizabeth M. Gilleran*

Elizabeth M. Gilleran, AICP, Director of Community Development

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**January 14, 2020**

**Resolution – Five Year Review of the Town of Herndon 2030 Comprehensive Plan and its associated supplements, as required by the Code of Virginia, Section 15.2-2230 (1950), as amended.**

**WHEREAS,** the Town of Herndon, Virginia 2030 Comprehensive Plan was adopted August 12, 2008; the Planning Commission completed an initial review of the plan in 2013 and has continued to recommend amendments to the plan; and

**WHEREAS,** at this time the Planning Commission has completed a review of the comprehensive plan as required by the Code of Virginia, to determine if it is advisable to amend the plan; and

**WHEREAS,** as part of this review the Planning Commission has completed a process of community outreach on the comprehensive plan and a wide variety of issues associated with the plan; and

**WHEREAS,** the Planning Commission of the Town of Herndon, Virginia finds that the comprehensive plan as amended to date contains the desired and appropriate plans and policies, and

**WHEREAS,** the Planning Commission of the Town of Herndon, Virginia, in their resolution of December 16, 2019, confirmed existing policy and provided additional priorities for future amendments to the comprehensive plan.

**NOW THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia affirms the policies and findings of the Planning Commission as included in the commission's resolution of December 16, 2019. Further, the Town Council affirms the priorities for future plan amendments as recommended by the commission.

**TOWN OF HERNDON, VIRGINIA**  
**PLANNING COMMISSION RESOLUTION**

**December 16, 2019**

**Resolution – Five Year Review of the Town of Herndon 2030 Comprehensive Plan and its associated supplements, as required by the Code of Virginia, Section 15.2-2230 (1950), as amended.**

**WHEREAS,** the Town of Herndon, Virginia 2030 Comprehensive Plan was adopted August 12, 2008; the Planning Commission completed an initial review of the plan in 2013 and has continued to recommend amendments to the plan; and

**WHEREAS,** at this time the Planning Commission has completed a review of the comprehensive plan as required by the Code of Virginia, to determine if it is advisable to amend the plan; and

**WHEREAS,** several amendments to the comprehensive plan have addressed major goals and objectives of the original plan through intensive planning processes driven by community input; specifically, the plan was amended by Town Council after Planning Commission recommendation, as follows:

CPA 10-01, Downtown Master Plan, adopted February 22, 2011;

CPA 11-01, Downtown Streetscape Map, a residential streetscape map designation along Center and Vine streets, adopted September 27, 2011;

CPA 11-02, Herndon Metro Station Area Plan, adopted February 28, 2012;

CPA 15-01, Fairbrook Drive Extension, a change to the Major Street Network Map adopted January 13, 2015;

CPA 17-02, Cycle Track on Herndon Parkway, to establish a cycle track along Herndon Parkway approximately 2,000 feet south of the W & OD Trail property at the eastern side of the town, adopted September 27, 2017.

CPA 18-01, South Elden Area Plan, adopted February 12, 2019; and

CPA 18-02, South Elden Street Design Concept, adopted February 26, 2019; and

**WHEREAS,** the Planning Commission and staff have completed an outreach process during 2019 on the Five Year Review of the comprehensive plan, which has included a public input meeting on September 25, 2019, preceded by staff outreach at the Herndon Farmers Market, as well as presentations and discussion at several community group meetings including, the Herndon Youth Advisory Committee, the Herndon Committee of the Dulles Regional Chamber of Commerce, the Herndon Economic Development Advisory Committee and the Pedestrian, Bicycle Advisory Committee and through a variety of media channels; and

**WHEREAS,** the Planning Commission of the Town of Herndon, Virginia finds that the comprehensive plan as amended to date contains the plans and policies that the commission supports.

**NOW THEREFORE, BE IT RESOLVED** that the Planning Commission of the Town of Herndon recommends to the Town Council that the following priorities for the development of potential future amendments to the plan and for the implementation of the comprehensive plan be adopted:

1. Continue a cooperative relationship with Fairfax County and regional entities regarding major public services such as human services, public transportation, and fire and rescue, while remaining vigilant to ensure that the town receives adequate and equitable services.
2. Ensure that the town's public facilities serve the needs of all ages and abilities.
3. Continue to assess indoor and outdoor recreational facilities and seek needed additional facilities through the land development entitlement process to ensure that increase service demand is met.
4. Continue to advance the comprehensive plan goal as adopted in the Metrorail Station Area Plan to provide housing choices for those attracted to compact, mixed use, walkable neighborhoods with nearby transit availability. Explore opportunities to achieve a greater range of housing choices through redevelopment in areas of the town where the comprehensive plan supports redevelopment. For example, the areas designated Adaptive Area or Adaptive Area-Residential on the comprehensive plan land use map.
5. Continue to advance major pedestrian and multimodal facilities in the Capital Improvement Program such as the Van Buren Street Improvements, the W & OD Trail Lighting and other pedestrian and bicycle connections to enhance access to Metrorail as well as other connections and linkages throughout the town and connecting to areas in Fairfax County or Loudoun County striving to ensure a walkable and multimodal community.
6. Ensure that while every town resident lives within 1/2 mile of a park, those parks are accessible by all forms of transportation and for all residents regardless of their varying sensory, communication and activity abilities.
7. Undertake a minor plan amendment to add references within the comprehensive plan to the Sustainability Plan adopted December 12, 2017, the Streetscape Manual adopted October 2018, the Bicycle Network Master Plan adopted August 13, 2019, and the Pedestrian Plan adopted October 29, 2019. This amendment should also address outdated references or instances where an older planning document has been superseded by more recent Town Council action.

8. Support the environmental goals of the plan including compliance with Virginia Chesapeake Bay Act requirements and the implementation of water quality improvement projects within the town through a cooperative agreement with Fairfax County and funded by the countywide stormwater service district tax. Depending on Virginia Department of Environmental Quality direction and guidance, develop an updated plan chapter on the environment including Chesapeake Bay policy specific to water quality and watershed improvements.
9. Amend the Heritage Preservation chapter of the comprehensive plan to provide desired changes to preservation policy, using the term “historic” rather than the term “heritage.”
10. Consider the regional planning efforts related to resilience, including the Northern Virginia Regional Commission’s “Resilient Critical Infrastructure, A Roadmap for Northern Virginia,” February 2018, which contains a goal to identify appropriate policy frameworks to respond to climate change planning and adaptation.
11. Continue to support cooperation with Fairfax and Loudoun with regard to new development and public facilities planning within areas that are close to the town/county boundaries, especially the coordination of all modes of transportation improvements with regard to major transit-oriented development areas.
12. Incorporate a plan chapter on economic development.
13. Ensure that future comprehensive plan amendments promote universal design and opportunities for individuals with varying sensory, communication and activity abilities.
14. Complete infrastructure impact analysis in the near term to inform planning efforts and to allow for full consideration of a potential plan amendment process relative to the Transit Related Growth area or designated portions (subareas) thereof.
15. In general, consider the 2040 and 2045 time horizons and beyond throughout the comprehensive plan document as these horizons have been part of the more recent plan amendment efforts adopted by the town. Further, these horizons have become part of the town’s participation in regional planning and funding efforts.
16. Downtown Master Plan: The commission acknowledges that there will be a significantly changed environment in place by the next five-year comprehensive plan review, as there are major projects currently in the development pipeline. Leading up to year 2024, reconsider the plan relative to the land use and density for non-redeveloped properties and other areas within the context and the experience of the build-out that has occurred by that point in time.

17. Continue to engage in regional planning efforts related to the Innovation Metrorail Station and surrounding areas within Loudoun County and Fairfax County.

**SEPTEMBER 25, 2019 PUBLIC MEETING – INPUT RECEIVED**

**Comments from breakout groups:**

**Parks and Recreation**

Park Maintenance including Bruin Park run by Fairfax County Park Authority -concern with dead trees (both standing and down on the ground) and conditions of sidewalk and courts

Coordination with Fairfax County

Open space in the HTOC and TRG and insuring connections to regional trails

Preserve green space and recreational facilities during redevelopment

Haley Smith Park – more park amenities needed

(NOTE: artificial turf field with lighting and other park improvements are included in the adopted FY 2020 – FY 2025 CIP at Fiscal Year 2023, with new playground equipment planned for Fiscal Year 2024).

**Transportation**

Walkability improvements makes for a more friendly, inviting, engaged community

General support for multimodal measures

Zone parking – related to anticipated parking problems north of TRG as a result of the opening of Herndon Metrorail Station

Need for street connectivity to provide alternatives and assist in reducing versus traffic congestion

Need to coordinate future roadway improvements with adjoining Fairfax and Loudoun Counties. For example: Fairfax County’s proposed Monroe Street improvements coordinated with the town’s (south) Van Buren Street improvements.

Need to push for regional view on transportation planning (to include multimodal and ‘complete street’ initiatives) and congestion relief measures

Elden Street corridor – need for improved signal synchronization

Need for a comprehensive multi-modal approach in providing access to Innovation Metrorail Station and Herndon Metrorail Station

Provide trail connection from the Downs neighborhood to the Transit Related Growth area and the Metrorail Station. This comment included acknowledgement that many in the neighborhood disagree.

Van Buren and Alabama intersection: re-evaluate the need for signalization as part of the Van Buren Street improvements. Can it be implemented later?

Retain community while relieving congestion – a challenge and balancing act

LEED Certification Requirements

Stream restoration

Tree preservation

Association between built environment and wellness

(there were no comments on Heritage Resources)

### **Housing and Residential Areas**

Performance standards for housing, especially new construction; deal with quality problems with builders; negative impact on owners and renters when there are extensive construction problems; potential negative impact on other properties in HTOC area

Allow short-term rentals so that owners can have supplemental income to help them stay in their homes. Others expressed concern on impacts to stable neighborhoods if allowing transient use through short-term rentals.

Fulfill need for age-based housing as well as housing with accessibility

Provide for Accessory Dwelling Units in existing housing

Consider rent control on private sector housing

Preserve existing affordable housing

Pursue county support for new affordable housing

Intermix affordable housing units in market rate projects

### **Economic Development**

Maintain town character

Technology sector recruitment

Encourage entrepreneurship

Support incubators and co-working

Focus on minority-owned businesses

Distinguish Herndon from Reston, Vienna (market sectors)

Recruit corporate headquarters to town

Focus on Metrorail area in recruitment

Smart city infrastructure

Streamline zoning process

Building permit – streamline process and guide users through the process

Provide clear documents with the requirements for opening a business

Encourage renewable energy infrastructure

Recruit green businesses

**Comment cards filled out at the meeting by participants:**

1. Never allow [name of development company] to build in Herndon again
2. With more population there will be more cars and more pollution; so the town should go after renewable energy and create jobs for people, especially the youth so that they are busy, have income and are discouraged from going after drugs and crime.
3. Address population growth. More people take up more land; since housing takes up land area, it reduces farmland to grow crops to feed the population; which in return will end up causing us to import more food.
4. Environment and sustainability are important issues for the future. We need to reduce the town's impact on global warming. Reduce plastic use and educate residents on proper recycling techniques so recycling doesn't get diverted to landfills or oceans.
5. Encourage residents to compost food waste versus sending it to landfills.
6. Building permits should reduce asphalt/concrete heat sinks to the maximum extent possible.
7. Land use should maximize the use of trees to absorb greenhouse gases.
8. Transportation areas should be cyclist/walker friendly.
9. The town should have designated commuter parking lots to encourage carpooling.
10. Develop a campaign to reduce polluted runoff to storm drains.
11. Policies should strive to retain "town" character, which is unique to Fairfax County; stronger adherence to Heritage Preservation guidelines to protect the Historic District.

12. Reduce high density housing projects and approvals for large homes on small lots (size of house should be in proportion to the size of the lot)
13. More green space and projects to reduce congestion; encourage drivers to use Herndon Parkway versus driving through the middle of town on Elden Street.
14. Retain diverse events for town residents. Don't scale back on Herndon Festival or fireworks displays. I was very disappointed to see the Homecoming Parade was re-routed last year.
15. Don't let Herndon be homogenized with the rest of Fairfax County.
16. Better signage / directional arrows are needed in the Municipal Center parking garage to assist newcomers.

**JULY 23, 2019 HERNDON YOUTH ADVISORY COUNCIL – INPUT RECEIVED**

1. Ensure multimodal access to all parts of Town particularly the new Metro station and Downtown
2. Design exterior spaces for a variety of activities
3. Provide opportunities through planning and design for everyone including those with varying levels of sensory, communication and activity abilities
4. Ensure that the Downtown develops with high quality and durable materials

**COMMENTS RECEIVED BY THE COMMUNITY DEVELOPMENT E-MAIL:**

Resident concerned on traffic with more downtown development planned; especially traffic on Elden Street and Van Buren Street; traffic mitigation during construction as well as after build-out. Does not believe that walkability of the site will be enough to offset traffic impacts.

Another resident expressed concerns about climate change, jobs, drugs and rehab programs, human trafficking, education, and the need to plant more trees and retain green space versus the impact of more urban construction.

## STAFF REPORT

**Town Council Work Session**  
**January 7, 2020**

**Title:**

Ordinance – to amend Chapter 66, Article V (Shared Mobility Devices), Section 66-106 to permit Pilot Program Agreement(s).

**Staff Contact:**

Lesa J. Yeatts, Town Attorney  
(703) 787-7370  
lesa.yeatts@herndon-va.gov

**Description:**

In November 2019, Town Council passed an ordinance amending Chapter 66 of the Town Code to regulate shared mobility devices within the town. Section 66-108 currently includes language which permits implementation of a pilot program(s) for shared mobility devices upon the direction of Town Council. Staff is seeking approval of the recommended amendments to Chapter 66 to clarify that the regulations therein apply to Pilot Program Agreements.

**Fiscal Impact:**

Unidentified at this point.

**Staff Recommendation:**

That the Mayor and Town Council adopt the attached ordinance approving and authorizing the Mayor to sign the Town Code Amendment.

**Attachments:**

Ordinance

**Prepared and Approved by:**



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Lesa J. Yeatts, Town Attorney

# TOWN OF HERNDON, VIRGINIA

## ORDINANCE

JANUARY 14, 2020

### **Ordinance – to amend Chapter 66, Article V (Shared Mobility Devices), Section 66-106 to permit Pilot Program Agreement(s)**

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

1. Chapter 66, Streets, Sidewalks, and Certain Other Places, Herndon Town Code (2000), is amended as follows:

#### **ARTICLE V. – SHARED MOBILITY DEVICES**

##### **DIVISION 1. - IN GENERAL**

...

#### **Sec. 66-106 – Shared Mobility Device Permit Required; Prerequisites to Issuance.**

- (a) It shall be unlawful for any person to offer shared mobility devices for hire without first obtaining a shared mobility device permit from the Town manager. For purposes of this article, offering shared mobility devices for hire shall mean offering a ride for hire that originates within the Town of Herndon.
- (b) A shared mobility device permit shall not be issued unless the applicant has first obtained approval, in the form of a *pilot project agreement*, franchise, license or other similar agreement, from the Town Council to use public rights-of-way for this purpose pursuant to Sec. 15.2-2100 of the Code of Virginia. Such *pilot project agreement*, franchise, license or other agreement may include such terms as the Town Council deems necessary and appropriate, including but not limited to those pertaining to the regulation and/or limitation of the number, operation, maintenance, specifications, and parking of shared mobility devices; insurance; indemnification; community outreach and communication; records and data sharing; reporting; fees; and rider/user regulations and agreements.
- (c) Nothing herein shall be construed to require the Town Council to grant a *pilot project agreement*, franchise, license or other similar agreement to any person or to otherwise limit the discretion of the Town Council with regard to terms of any shared mobility device agreement or shared mobility device permit condition.
- (d) Compliance with this article is a separate and additional legal requirement for shared mobility devices and issuance of a shared mobility device permit shall not

be construed to authorize the offering for hire of shared mobility devices in a manner that does not conform to other applicable federal, state, and local law.

State Law Reference – Code of Virginia §§ 15.2-2100 et seq., 46.2-1315.

**Sec. 66-107– Shared Mobility Device Permit Requirements and Conditions.**

Shared mobility device permits issued pursuant to this article shall be subject to the following general conditions. In addition, in granting a shared mobility device permit, the Town manager may impose conditions, requirements, and restrictions as are necessary to reasonably protect the public health, safety, and welfare.

- (a) Shared mobility device permittees shall be compliant with all applicable federal, state, and local laws, including but not limited to Herndon Town Chapter 30, Article VII as amended, pertaining to business licenses and Code of Virginia § 2.2-4311.2, as amended, pertaining to authorization to transact business in the Commonwealth of Virginia, and the provisions of this article.
- (b) Shared mobility device permits shall not be non-assignable without the prior written consent of the Town manager.
- (c) Shared mobility device permittees shall be compliant with the applicable *pilot project agreement*, franchise, license or other similar agreement for use of public rights-of-way. Expiration or termination of such *pilot project agreement*, franchise, license or other similar agreement shall be cause for immediate revocation of the shared mobility device permit.

State Law Reference – Code of Virginia §§ 15.2-2100 et seq., 46.2-1315.

**Sec. 66-108 – Application and Review Process for Shared Mobility Device Permits.**

- (a) The Town manager is authorized and directed to develop an application process for shared mobility device permits, which shall be kept on file in the office of Town manager. No shared mobility device permit shall be approved until a complete application and fee is received. In order to carry out the purposes of this article, the Town manager may require the applicant to provide information in addition to that provided in the application. A fee of \$300 shall accompany all applications for shared mobility device permits.
- (b) After receipt and review of the complete application materials, the Town manager may: (1) approve the shared mobility device permit with or without additional conditions if it meets the standards for approval set forth in this article; or (2) deny the shared mobility device permit if it does not meet the standards for approval set forth in this article. Upon denial of a shared mobility device permit application, the

applicant shall be apprised of the reasons for denial in writing and shall be entitled to appeal the decision as set forth in Section 66-110.

- (c) Upon receipt of an application for a shared mobility device permit or an application for a *pilot project agreement*, franchise, license or similar agreement for use of shared mobility devices within public rights-of-way, the Town Council may, in its sole discretion, direct the Town manager to solicit additional proposals through a competitive bidding process and/or direct the Town manager to implement a pilot program for shared mobility devices prior to acting on an application. If a pilot program or competitive bidding process is employed, the Town Council may defer action upon or deny the permit application.

**Sec. 66-109 – Term of Shared Mobility Device Permit; Extensions.**

- (a) The term of any shared mobility device permit shall run concurrently with the term of the applicable *pilot project agreement*, franchise, license or other similar agreement for use of public rights-of-way.

...



## STAFF REPORT

**Town Council**  
**January 7, 2020**

**Title:**

Ordinance to amend the Code of the Town of Herndon to add thereto a new Chapter 11 entitled Short-Term Residential Rental Registration.

**Staff Contact:**

Lesa J. Yeatts, Town Attorney  
(703) 787-7370  
lesa.yeatts@herndon-va.gov

**Description:**

§ 15.2-983 of the Code of Virginia grants localities the power to require a registry for short-term rentals and retains localities' authority to regulate short-term rentals via zoning. The Town adopted Zoning Ordinance amendments regulating Short Term Rentals in 2019 that become effective February 1, 2020. This ordinance creates a short-term rental registry; defines terms, provides exemptions to registration requirements, establishes penalties for violation of the ordinance and provides for an appeal. The ordinance has an effective date of February 1, 2020.

**Fiscal Impact:**

There shall be no fees for registration. However, if an owner/operator who is required to register fails to do so, he/she shall be subject to a fine of \$500.00.

**Staff Recommendation:**

The Mayor and Town Council adopt the attached ordinance.

**Attachments:**

Draft ordinance

**Prepared and Approved by:**

A handwritten signature in cursive script, reading "Lesa J. Yeatts". The signature is written in dark ink and is positioned above a horizontal line.

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Lesa J. Yeatts, Town Attorney

# **TOWN OF HERNDON, VIRGINIA**

## **ORDINANCE**

**JANUARY 14, 2020**

**Ordinance – to amend the Code of the Town of Herndon to add thereto a new Chapter 11 entitled Short-Term Residential Rental Registration.**

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

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

### **Chapter 11 - Short Term Rental Registration.**

#### **Sec. 11-1. - Definitions.**

As used in this section:

“Operator” means the proprietor of any dwelling, lodging or sleeping accommodation offered as a short-term rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity.

“Short-term rental” means the provision of a room or space that is suitable or is intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than thirty consecutive days, in exchange for the charge for the occupancy.

“Director” means the Director of Finance or his designee.

#### **Sec. 11-2. - Registration Required.**

(a) The owner or operator of any dwelling, lodging or sleeping accommodation who offers, for a charge, or rents such to persons for short term rental must register annually with the Department of Finance on the Town’s Short-Term Rental Registry.

(b) The registration shall state the name, residence, business address of the owner and/or operator and the addresses of all properties within the Town of Herndon offered for short-term rental. There shall be no fee for such registration. After initial registration, registration shall be renewed by January 1<sup>st</sup> of each year.

#### **Sec. 11-3. - Exceptions.**

Any person who is (1) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (2) registered pursuant to the Virginia Real Estate Time Share Act, Va Code § 55-360 et seq., or (3) licensed with the Department of Health related to the provision of room or space for lodging shall present evidence of such other

licensing or registering to the Director and be exempt from registering under this ordinance. Should such registration or licensing cease, the person shall forthwith register with the Director on the Town's Short-Term Rental Registry.

#### **Sec. 11-4. - Failure to Register, Fine and Penalty, Appeal.**

(a) Any owner and/or operator who is required to register under this ordinance who fails to register within 30 days of offering a property for rent or renting said property shall be subject to a fine of \$500.00. Unless and until the owner/operator pays the fine and registers the property, such person shall not continue to offer any property for short term rental.

(b) Any owner or operator required to register under this ordinance may be prohibited from offering a specific property in the Town of Herndon upon multiple violations on more than three occasions of applicable state and local laws, ordinances, and regulations, as they relate to short-term rental, including any applicable Town transient occupancy taxes or meals taxes.

(c) A decision of the Director under this section may be appealed to the Town Manager upon the filing within 10 business days of the date of the notice of the action of the Director.

#### **Sec. 11-5. - Non-contravention.**

Except as provided in this chapter, nothing herein shall be construed to prohibit, limit, or otherwise supersede existing local authority to regulate short-term residential rental of property through general land use and zoning authority. Nothing in this chapter shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants; the provisions of condominium instruments of a condominium created pursuant to the Condominium Act (Sec. 55-79.39 et seq) of the Code of Virginia, 1950, as amended; the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (Sec. 55-424 et seq.) of the Code of Virginia, 1950, as amended; or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (Sec. 55-508 et seq.) of the Code of Virginia, 1950, as amended.

#### **Sec. 11-6. - Administration and Enforcement**

It shall be the responsibility of the Director to administer, interpret and enforce the provisions of this Chapter. Notwithstanding any other provision of this chapter, the Director may enter into agreements, subject to local law, with computer platform hosts of short-term residential rentals, to facilitate the efficient collection of the transient lodging tax pursuant to this code.

2. This ordinance shall be effective on and after February 1, 2020.

**TOWN OF HERNDON, VIRGINIA**

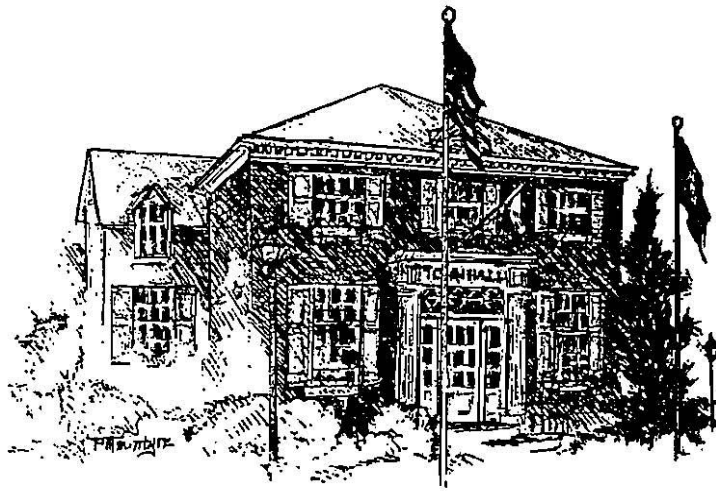
**RESOLUTION**

**JANUARY 14, 2020**

**Resolution- to reappoint Matthew Ossolinski to the Heritage Preservation Review Board.**

**BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby reappoints:

- **Matthew Ossolinski** as the “architect/architectural historian” to the Heritage Preservation Review Board for a one-year (non-resident) term ending February 28, 2021.



**TOWN OF HERNDON, VIRGINIA**  
**PROCLAMATION**  
**HERNDON TOWN INCORPORATION DAY**  
**JANUARY 14, 2020**

The Town of Herndon, Virginia, was officially incorporated on January 14, 1879. In honor of the town's official birthday, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim January 14, 2020, as **Herndon Town Incorporation Day** in the Town of Herndon, to recognize the 141<sup>st</sup> anniversary of our town. With respect and reverence to the Town of Herndon and its history, the Town Council will highlight and proclaim each January 14 as **Herndon Town Incorporation Day**.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby express appreciation to mayors, councils, members of the Herndon Historical Society, town staff, and volunteers, who ~ both in the past and in the present ~ continually strive to preserve and document the history of the Town of Herndon, and encourage the public's interest in our distinct heritage.

The Herndon Town Council formally presents this proclamation to the Herndon Historical Society every 10 years. The next presentation is scheduled for January 2029 on the occasion of the town's 150<sup>th</sup> anniversary.