TOWN OF Herndon VIRGINIA

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HERNDON TOWN COUNCIL
Work Session
Tuesday, January 7, 2020

At a regular meeting of the Town Council of the Town of Herndon, Virginia, held in the Herndon Council Chambers Building, at 765 Lynn Street, Herndon, Virginia, on Tuesday, January 7, 2020, at 7:00 p.m., there were present:

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

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Elizabeth Gilleran, Director of Community Development; Page Kalapasev, Director of Information Technology; Cindy Roeder, Director of Parks and Recreation; Scott Robinson, Director of Public Works; Tammy Chastain and John Irish, Deputy Directors of Public Works; Jennie Tripoli, Director of Finance; David Stromberg, Zoning Administrator; Karen Gagliano, Budget Manager; Roxann Fox Simkins, Risk Manager; Dana Heiberg, Senior Planner; and Margie C. Tacci, Deputy Town Clerk.

ANNOUNCEMENTS

Mayor Merkel wished everyone a Happy New Year.

Mayor Merkel warmly welcome Roxann Fox Simkins, who joined the town in December as the town's first Risk Manager.

The Town Attorney gave background on the Risk Manager.

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; and**

3. **Certificate of Appreciation, to recognize Dr. Manuel A. Gomez Guemez, Parks & Recreation Department, on the occasion of his retirement.**

There were no comments on the presentations, which were scheduled for the January 14, 2020 public hearing.

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).**

The Zoning Administrator presented the staff report dated January 7, 2020, which is on file in the Town Clerk's Office. The proposed zoning ordinance text amendment (ZOTA) would develop standards for small cell wireless service providers and update existing regulations to align with the Code of Virginia. Companion amendments to the Town Code would also be required. The state came up with the term "Administrative Review Eligible Projects," which meant that any type of review for the small cell towers would be administrative. He stated this was the type of technology used for 5G implementation.

The Zoning Administrator reviewed the requirements, which would be applicable to small cell facilities on public or private parcels of land but not to small cell facilities

in the right-of-way. Staff would show some images of small cell towers at the public hearing on this item. This included some from the Smart Cities project or that were located in utility poles in the right-of-way.

There was a brief question and answer session between Mayor Merkel and the Zoning Administrator about the administrative review time constraints.

The Zoning Administrator continued the staff report and stated that a small cell facility proposed in the Heritage District would require approval from the Heritage Preservation Review Board (HPRB), except under a few circumstances. Outside of the Heritage District, approval would be required by the Architectural Review Board unless the same criteria for administrative approval was met. He continued discussing the ordinance requirements and mentioned possible locations for the small cell towers.

Following discussion at its November and December meetings, the Planning Commission recommended approval of the proposed ordinance. Staff recommends approval of the proposed ordinance, as presented.

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

During the discussion, Councilmember McKenna stated that he would send the Town Clerk an article about San Francisco and Oakland's small cell towers.

During the discussion, the Town Attorney stated that there was also an order from the FCC, which would make this a federal mandate. She stated that this was a nationwide issue. The proposed ordinance would give staff some tools to deal with this mandate.

There was further discussion.

In response to queries from Councilmembers Friedrichs and Dhakal, the Zoning Administrator stated that the town could increase the lot size requirement, but it would not preclude small cell towers in the right-of-way.

Following discussion, Mayor Merkel suggested tracking this item and considering future action at the General Assembly opposing similar regulations.

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.**

The Senior Planner presented the staff report and PowerPoint dated January 7, 2020, which are on file in the Town Clerk's office. He reviewed the history and purpose of the Comprehensive Plan and discussed staff's outreach to the public during the five-year plan review, along with the popular public comment topics. He discussed the plan area and Planning Commission's resolution, which included priorities listed for Council. Areas of emphasis included multi-modal transportation, sustainability, interjurisdictional cooperation and regional planning, infrastructure, and land use considerations. Staff recommends approval of the resolution affirming the policies and findings of the Planning Commission. The proposed resolution also affirms the priorities for future plan amendments as recommended by the Commission.

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

Councilmembers Dhakal and del Aguila provided comments about housing and HPRB Guidelines. They each asked for more detail on these items, like affordable and workforce housing and more information on the HPRB Guidelines process.

Councilmember del Aguila asked that the arts center facility be included in the five-year outlook.

Councilmember del Aguila highlighted renewable energy infrastructure and asked for electric charging stations to be added.

Councilmember Friedrichs echoed her colleagues' comments about affordable and workforce housing and expressed support for promoting universal design and accommodating those of varying abilities. She suggested taking a comprehensive look at the needs of elderly and disabled residents. Additionally, she stated she has heard from many residents that the town could be more supportive of emerging businesses.

Following a brief question and answer session between Councilmember Friedrichs and the Senior Planner, Councilmember Friedrichs stated that she had heard from developers the term "Adaptive Area" was not an alluring term.

In response to Councilmember Friedrichs, the Director of Community Development discussed the meaning of Adaptive Area stated that the term could be more self-explanatory.

Councilmember Friedrichs stated that the term Adaptive Area should change.

Mayor Merkel stated that whether or not the term is changed, it should be better defined.

Councilmember del Aguila stated he had heard something similar to Councilmember Friedrichs' comments.

The Senior Planner and Director of Community Development provided comments. The Director of Community Development stated that staff could look at more options for the term Adaptive Area.

Councilmember McKenna asked that transportation options for those who are blind, deaf, or on the autism spectrum, be included in the plan. He stated this suggestion came from the Herndon Youth Advisory Council.

In response to queries from Vice Mayor Olem, the Director of Community Development stated that staff would check with other jurisdictions about the terms they used in their planning documents.

Following discussion and with the concurrence of Council, Mayor Merkel indicated that Council would continue this item to the January 28 public hearing at next week's meeting. She stated that staff needed to come back to Council with additional information that the Council might use to amend this item.

In response to queries from Mayor Merkel, the Director of Community Development stated that staff would work with the Council at the second set of meetings in January to review changes to the proposed resolution.

6. <u>Ordinance, to amend Chapter 66, Article V (Shared Mobility Devices), Section 66-106 to permit Pilot Program Agreement(s)</u>.

The Town Attorney presented the staff report dated January 7, 2020, which is on file in the Town Clerk's office. She stated that in November 2019, the Council passed an ordinance amending Chapter 66 of the Town Code to regulate shared mobility devices in the town. Section 66-108 currently includes language which permits implementation of a pilot program(s) for shared mobility devices on the direction of Council. Staff recommends approval of the proposed amendments to Chapter 66 to clarify that the regulations would apply to Pilot Program Agreements.

Following brief discussion and with the concurrence of Council, staff was asked to add this item to the Consent agenda for next week's meeting.

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

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

Disclosure:

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

[Note: at 7:50 p.m., Mayor Merkel relinquished the chair to Vice Mayor Olem and she left the work session room.]

Vice Mayor Olem recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report dated January 7, 2020, which is on file in the Town Clerk's office. In 2019, the town adopted zoning ordinance amendments regulating Short Term Rentals, effective February 1, 2020. 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. This proposed ordinance would create a short-term rental registry; define terms; provide exemptions to registration requirements; establish penalties for violation of the ordinance; and provide for an appeal process. Staff recommends approval of the proposed ordinance, as presented.

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

Following brief discussion and with the concurrence of Council, staff was asked to add this item to the Consent agenda for next week's meeting.

[Note: Mayor Merkel at 7:55 p.m., returned to the work session room to preside over the remainder of the meeting.]

CONSENT AGENDA

8. **Resolution, to reappoint Matthew Ossolinski to the Heritage Preservation Review Board; and**

9. **Proclamation, to recognize "Herndon Town Incorporation Day," January 14, 2020.**

Mayor Merkel stated that the town recognizes "Herndon Town Incorporation Day" with a formal presentation every ten years.

DISCUSSION

10. **FY 2021 Budget Guidance**

Mayor Merkel recognized the Town Manager for discussion.

The Town Manager stated that like last year, staff was presenting the budget guidance as a discussion item at the first work session in January. The Council could give staff their input and policy guidance prior to staff writing the budget guidance resolution. He stated that the process and budget schedule would be similar to last year. He recognized the Budget Manager for the staff presentation.

The Budget Manager presented a PowerPoint dated January 7, 2020, which is on file in the Town Clerk's office. She stated that the Council would review this item at its January 14 public hearing for potential adoption. She reviewed the budget requirements, calendar, and proposed schedule. She stated that the April 7 work session was greyed out in the PowerPoint for discussion.

The Town Manager stated that staff realized that April 7 was in the middle of spring break. He was not sure how many citizens would be distracted that week. He stated that staff should be able to provide Council with the drafted budget before April 1 and that it could be discussed either at the last work session in March, or the Council could move the April 7 work session to Tuesday, March 31. He stated this decision was up to the Council.

Vice Mayor Olem stated she had made travel plans for March 31, since it was the fifth Tuesday of March, when the Council had not scheduled a meeting.

The Town Manager stated that he might release the budget earlier than staff usually does.

The Budget Manager continued the PowerPoint presentation and discussed the considerations for the FY 21 Budget. She outlined trends, best financial practices, reserve funds, life cycle budgeting, and updated expenditure analyses. She addressed ongoing challenges and risk factors, highlighting health care costs, competitive employment, and funding priorities listed in the 2035 Vision.

The Town Manager provided comments about personnel costs and the town's efforts to remain competitive in the local job market. He stated that once the Virginia Retirement Service (VRS) completed its biannual actuarial process, staff expected an increase in VRS contributions. He stated that the town would not receive these costs, like the health care costs, until further into the budget process.

The Director of Finance provided comments about the anticipated VRS increase.

The Budget Manager continued the PowerPoint and reviewed considerations for the future. She stated that five-year projections indicated that General Fund revenues would not keep pace with increasing baseline expenditures, and named other factors and drivers contributing to cost increases.

The Town Manager stated that this was a picture of what the town faced going into the budget year. Staff was looking for high-level budget guidance this evening. He asked the Council to keep in mind that the town is primarily a service organization. Staff had made some adjustments to the salary structures of the Police Department (HPD) and the Department of Public Work (DPW), because those were two areas in which the town was having trouble recruiting and retaining employees. As a result, the town was able to hire some certified officers and DPW had received several employment applications.

The Town Manager expressed concern about water and sewer costs. The town worked with Davenport on a study that would help the town break even on these costs. Since then, commodity prices have increased. Therefore, the town was losing the ground that it had made up because of these price increases. Staff would bring Davenport back to reevaluate the water and sewer model. He emphasized that the town had the lowest rates in the region, but needed to determine if the revenue pays for the services the town provides. The other water and sewer item that the town has to be aware of was that water main breaks were occurring more frequently. He stated this was a problem and the town needed to invest back in the system to pay for its services.

There was discussion amongst Council and staff on budget guidance.

In response to a query from Mayor Merkel, the Town Manager outlined what he was looking for from Council this evening.

There was a brief question and answer session between Councilmember McKenna and the Town Manager about water and sewer costs.

There was a brief question and answer session between Councilmember Friedrichs and the Town Manager about transportation costs.

There was a brief question and answer session between Councilmember del Aguila and the Town Manager about water and sewer rates and CIP projects.
In response to queries from Councilmember del Aguila, the Town Manager stated that last year, staff moved CIP projects that did not have a specific funding timeline to a CIP "waiting list" document.

Councilmember del Aguila requested that staff add how long items have been listed on the CIP to the document. He also asked for the length of time that projects were on the CIP waiting list.

The Town Manager stated that the CIP was a financial plan. Staff was prioritizing updating costs to a realistic level and to show the appropriate allocation of funds.

There was a brief question and answer session between Mayor Merkel and the Town Manager about the budget guidance and priorities.

There was a brief question and answer session between Councilmember Friedrichs and the Town Manager about current employment vacancies.

Vice Mayor Olem emphasized project life cycle maintenance, infrastructure, and ensuring staff was paid appropriately. She discussed the importance of HPD and their response in emergency situations.

There was discussion between Councilmember Friedrichs, Mayor Merkel, Vice Mayor Olem, the Town Manager, and the Deputy Director of Public Works about recycling and its costs.

There was a brief question and answer session between Councilmember Dhakal and the Town Manager about revenues and expenditures.

In response to queries from Councilmember Dhakal, the Town Manager stated that once he holds the two-by-two meetings with Council, staff would be in a better position to discuss the total gap between revenues and expenditures. Departments were submitting their budgets by midnight tonight. Staff would reach out to the Council to set up their budget meetings for February. He stated that looking at the consumer price index, it appeared that the town was shrinking.

Mayor Merkel stated that Council might need to consider raising the real estate tax because of declining revenues.

Following discussion, Mayor Merkel stated that it was her understanding that some of Council's priorities were: implementation of the downtown and Metro plans, infrastructure and service levels, CIP projects, and water and sewer rates.

In response to queries from Mayor Merkel, the Town Manager stated that some other areas to consider in the budget guidance were supporting technology and fiscal oversight, staff being able to meet employment needs as they emerge, and being cautious about spending.

There was a brief question and answer session between Councilmember Baker and the Town Manager.

Councilmember Baker stated that she supported the decisions the Town Manager was making, specifically about personnel. She supported looking at the water and sewer and recycling rates and would like the Council to review these rates sooner rather than later. She stated that 2011 was the last time the town raised property taxes and that it might be a good idea to look at the tax rates.

There was a brief question and answer session between Vice Mayor Olem and the Deputy Director of Public Works about glass recycling.

ROUNDTABLE

1. **Councilmember McKenna:** Wished everyone a Happy New Year.

2. **Councilmember Baker:** Stated that she enjoyed meeting Jennifer Taylor, who had applied to be Mrs. Herndon. She would compete in the Mrs. Virginia competition on April 4. She was reaching out to some local businesses for sponsorship money.

3. **Councilmember Friedrichs:**

WIFI

Councilmember Friedrichs asked if there would be better WIFI reception in the Herndon Council Chambers Building soon.

The Town Manager stated that there would be better reception soon.

January 7, 2020
(work session)

Social Media

Councilmember Friedrichs discussed an interaction on Facebook about Aslin Brewery.

Mayor Merkel stated that she was very concerned about the exchange, because she believed the town's lawyers were working with Aslin's lawyers and the town generally should not discuss the situation.

The Town Attorney stated the town was in enforcement action in this case and have been since this past April.

Councilmember Friedrichs stated that she thought the town had decided to go ahead.

The Town Manager stated that the town had given Aslin some flexibility to continue on their current building permit to a certain point. Aslin had to resubmit a building permit application and the enforcement action had continued.

The Town Attorney stated that while the town was in enforcement, they could not talk about enforcement actions.

There was brief discussion amongst Council and staff about what was occurring with Aslin.

Councilmember Friedrichs asked if anyone on staff was dealing with Aslin face-to-face.

The Town Attorney and Town Manager stated that Aslin's representatives were working with staff and the town could not comment on the social media posts.

Councilmember Friedrichs stated that, on social media, the perception was the town was privileging Jimmy's over Aslin. She asked if there was anything the town could provide to the public to clear this up.

Councilmember McKenna stated that this was a social media situation. He stated that he was off social media for these reasons.

There was further discussion.

The Town Manager discussed social media comments. He discussed responding to these types of situations in a measured, consistent way.

Mayor Merkel stated that this was a reason that she did not often respond in Facebook groups.

Councilmember Friedrichs stated that she could not convince individuals, on social media or some that she knew, that staff was treating the businesses the same, even though she believed that was the case.

The Town Attorney stated that this was a unique situation because of the aspects of confidentiality. She encouraged Council to speak with the Town Manager when questions like these arose.
The Town Manager emphasized that staff was treating Aslin the same as anyone else in a similar situation.

Following queries from Councilmember Friedrichs, the Town Manager stated that any small business with questions or concerns should speak to the Economic Development Manager. The town would like to know about and correct any issues.

Fairfax Connector Bus

Councilmember Friedrichs asked for an update on the Fairfax County Connector circulator bus.

The Director of Community Development stated that staff met with Fairfax County last Friday. It was her understanding that the county proposed a modified circulator, going in a one-way loop. She had asked staff to verify the headway (time between the buses) for the route.

Downtown Development

Councilmember Friedrichs stated that she heard Comstock was not happening in the downtown and asked for clarification.

The Town Manager stated it was moving forward.

Mayor Merkel stated that Comstock would meet with staff and then planned to meet with Council soon to provide an update.

The Town Manager stated that he hoped the update would occur in January, but it might be early February.

4. **Councilmember del Aguila:**

Town Businesses

Councilmember del Aguila stated that there was a perception that it was difficult to do business in the town. He stated the town should take that as a data point and use it as an opportunity to see what could be done differently. For example, the town could revise or update ordinances or processes to help businesses.

The Town Manager stated that since the businesses in town were surveyed, the town has taken proactive changes in the areas where the survey indicated the town was not doing well. He highly encouraged businesses to talk with the Economic Development Manager to address their concerns.

Mayor Merkel stated that she and the Economic Development Manager visit businesses almost every week. She suggested that businesses reach out to the Economic Development Manager or her, and they would be happy to visit, meet with the business owners, and listen.

Planning Session

Councilmember del Aguila stated that Council discussed having a planning session last year and asked if there was one planned for this year.

Vice Mayor Olem stated that she contacted the Town Manager on this as well. She stated this was the first year she served on Council when one was not held.

Councilmember Dhakal supported a planning session.

The Town Manager stated that was a question for the Council.

Mayor Merkel asked about the objective, since the Council was halfway through its term.

Councilmember McKenna suggested conversations about the budget and revenue as possible topics.

Vice Mayor Olem discussed holding a retreat where new and long serving Councilmembers could review the town's role including restrictions on towns and counties.

The Town Manager stated that he was hearing several objectives, varying from foundational, to operational, to strategic.

Councilmember del Aguila suggested that the Council needed the foundation about what it could and could not do, and then having done that, should look at what they could prioritize. He stated that he counted four people and he would assume this would happen.

Councilmember Friedrichs stated that since the Council has been in office for a year, they might have had questions arise. She stated the Council could look at strategy and planning better as well.

There was brief discussion amongst Council and staff about a retreat/planning session.

Herndon Police

Councilmember del Aguila thanked the Chief of Police for her letter to the Latino community. He printed it out on nice cardstock to give to residents and it was well-received.

5. **Vice Mayor Olem:** Stated that she attended the Herndon Community Center's Open House. She stated that she and her friend signed up for some classes that she looked forward to attending.

Vice Mayor Olem stated that she is currently watching four grand-dogs and it was an experience. She asked anyone to come over who needed "dog time."

Vice Mayor Olem stated she has commented on social media before on certain issues, like the permit that the town provided to the Green Lizard to allow additional bicycle parking. However, she stated that she does not post her personal opinions.

CLOSED MEETING

On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by unanimous vote, the Herndon Town Council went into Closed Meeting at 9:11 p.m., under Section 2.2-3711(A)(1), of the Code of Virginia, for discussion of prospective candidates relative to appointments to boards & commissions.

Vote: Councilmembers Baker, Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

RECESS

At 9:11 p.m. Mayor Merkel called a brief recess, and at 9:16 p.m., the closed meeting reconvened in Herndon Council Chambers Building, all members present and with Mayor Merkel presiding.

CLOSED MEETING (CONTINUED)

On motion of Councilmember Friedrichs, seconded by Vice Mayor Olem, and carried by unanimous vote, the Herndon Town Council reconvened in public session at 9:20 p.m.

Vote: Councilmembers Baker, Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by unanimous vote, the Herndon Town Council approved the following Certification of Closed Meeting.

Vote: Councilmembers Baker, Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Certification of Closed Meeting

WHEREAS, the Town Council of the Town of Herndon has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by this Town Council that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed, or considered by the Town Council.

VOTE:
Ayes – 7
Nays – 0

ABSENT DURING VOTE: 0

ABSENT DURING MEETING: 0

ADJOURNMENT

There being no further business, the meeting adjourned at 9:20 p.m.

Lisa C. Merkel
Mayor

TOWN OF HERNDON, VIRGINIA 1879

Amanda M. Kertz
Deputy Town Clerk

Minutes approved by Town Council: January 28, 2020.