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HERNDON TOWN COUNCIL
Tuesday
January 14, 2020

The Town Council met in public session on Tuesday, January 14, 2020, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Jennifer K. Baker; Cesar del Aguila; Pradip Dhakal; and Signe Friedrichs.

Councilmember Bill McKenna was absent.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Elizabeth Gilleran, Director of Community Development; Page Kalapasev, Director of Information Technology; Scott Robinson, Director of Public Works; Tammy Chastain, Deputy Director of Public Works; Anne Curtis, Chief Communications Officer; David Stromberg, Zoning Administrator; Dennis Holste, Economic Development Manager; Amanda Morrow Kertz, Deputy Town Clerk; and Jessica Sizemore, Legislative Assistant.

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

PLEDGE OF ALLEGIANCE

Mayor Merkel welcomed Daisy Troop 51084 from Clearview and Dranesville Elementary schools who led the audience in the Pledge of Allegiance to the Flag of the United States of America. Before the meeting, the troop met with the Council.

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ANNOUNCEMENT

Mayor Merkel welcomed everyone to the first meeting of the new year. She also stated that Councilmember McKenna would be absent from tonight's meeting.

APPROVAL OF MINUTES

Vote on December 2, 2019 Special Work Session Minutes

On motion of Councilmember Friedrichs, seconded by Vice Mayor Olem, and carried by a vote of 5-0, the minutes of the December 2, 2019 special work session were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker abstaining. Councilmember McKenna was absent.

Vote on December 3, 2019 Work Session Minutes

On motion of Vice Mayor Olem, seconded by Councilmember Friedrichs, and carried by a vote of 6-0, the minutes of the December 3, 2019 work session were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember McKenna was absent.

Vote on December 10, 2019 Public Hearing Minutes

On motion of Councilmember Baker, seconded by Councilmember Dhakal, and carried by a vote of 6-0, the minutes of the December 10, 2019 public hearing were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember McKenna was absent.

PRESENTATIONS

3. Proclamation, to honor Sharon Bulova, Chairman, Fairfax County Board of Supervisors.

Mayor Merkel stated that the town was proud to honor former Fairfax County Board of Supervisor Chair Sharon Bulova for her many years of service to the town and Fairfax County. She outlined the process for the presentation and stated that after the proclamation was read into the record, she would recognize Council for comments, and then she would invite anyone forward who would like to say a few words. Mayor Merkel stated that it was her privilege to read the proclamation honoring Sharon Bulova into the record.

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Following comments from Council, Mayor Merkel recognized Supervisor John Foust, Fairfax County Board of Supervisors, who provided comments on Ms. Bulova's service and retirement.

Mayor Merkel stated that Senator Jennifer Boysko and Delegate David Bulova, Sharon Bulova's son, conveyed their congratulations and expressed their regrets in being unable to attend due to the start of the General Assembly.

The following individuals came forward to provide comments on Ms. Bulova's retirement:

- Mike O'Reilly, 761 Monroe Street, Herndon; and
- Jeff Fairfield, 459 Herndon Parkway, Herndon.

Chairman Bulova provided brief comments on her recognition.

The proclamation was presented to Chairman Bulova. Supervisor Foust, Mike O'Reilly, and Jeff Fairfield also joined her for the presentation.

**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

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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.

4. Proclamation, to recognize "Nachman Day," January 14, 2020, in honor of the 100th Anniversary of the Nachman family in Herndon.

Vice Mayor Olem read the proclamation recognizing "Nachman Day" into the record.

Following comments from Council, the following individuals came forward to provide comments on the proclamation and the Nachman family:

- Dave Meyer, 720 Lynn Street, Herndon;
- Diane Weiss, 706 Morningside Court, Herndon;
- Jeff Fairfield, 459 Herndon Parkway, Herndon;
- Cate Fulkerson, Herndon High School Band Parents Association; and
- Larry Presgrave, Retired Captain, Herndon Police Department.

Mayor Merkel read a letter from former Mayor and Delegate Tom Rust into the record, which is on file in the Town Clerk's office.

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Arthur and Howard Nachman provided comments on the proclamation and their family's presence in Herndon.

The proclamation was presented to the Nachman family. Jeff Fairfield joined them for the presentation.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
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.

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

Mayor Merkel recognized William H. Ashton II, Town Manager, for an introduction and background on Dr. Guemez's career with the town.

Following comments from Council, Dr. Guemez provided comments on his recognition.

The certificate was presented to Dr. Guemez, and his wife joined him for the presentation.

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6. COMMENTS FROM THE TOWN MANAGER

William H. Ashton II, Town Manager, had no comments.

7. COMMENTS FROM THE TOWN COUNCIL

Councilmember del Aguila: Thanked those that have shown interest in applying for the town's boards and commissions. He stated that he would check with the Town Manager to see if additional resources were submitted to the "talent bank." He encouraged those interested to submit their applications and stated that further information was available on the town's website, herndon-va.gov.

Councilmember Friedrichs: Echoed Councilmember del Aguila's comments about applying to the town's boards and commissions. She stated that for the town to appoint individuals to the Heritage Preservation Review Board (HPRB) that live in historic homes, they needed to apply. She encouraged those interested to apply and provided links to the town's website.

Mayor Merkel stated that if individuals had difficulty finding the application, they could email her or one of the Councilmembers and they could provide the link.

Vice Mayor Olem: Provided comments on the short-term residential rental registration, Ordinance 20-O-03, which was item #14 on the Consent agenda. She stated that forms for homeowners to apply to have the short-term rentals in town would be out soon. She stated it would be announced as soon as it was ready, and the town website would be updated with more information.

Vice Mayor Olem welcomed those present to the first public hearing of the new decade.

Councilmember Baker: Provided comments on NextStop's current production, which was "The Mountaintop" about Martin Luther King, Jr. She stated that on Monday, January 20, Martin Luther King, Jr. Day, NextStop would donate their proceeds to "Service Never Sleeps." Councilmember Baker thanked NextStop and encouraged those interested to go see the production, which would be showing through February 2.

Mayor Merkel: Stated that the January 2, 2020 edition of USA Today, featured a video and article about Ian Nordling's story and the work of the Growing Kids Therapy Center. She stated that the piece was inspiring, and she was happy to see both Ian and the center gain national recognition.

Mayor Merkel stated that town offices would be closed on Monday, January 20, in recognition of Martin Luther King, Jr. Day. She indicated that citizens should visit the town's website for the refuse collection schedule and hours of operation for the community center and golf course.

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8. COMMENTS FROM THE AUDIENCE

The following members of the audience provided comments:

- Ann Vayda, 631 Oak Street, Herndon, provided comments on Consent Agenda item #11, Resolution 20-G-02, to reappoint Matthew Ossolinski to the HPRB. She discussed the appointee and asked the Council to delay this appointment until the town undertook rigorous outreach to those who were subject to the HPRB's rulings;
- Alexander Burke, 910 George's Place Apt. 304, Herndon, provided comments on affordable and senior housing in downtown Herndon. He referenced a September 2019 document from Cornerstones, which he provided for the record earlier in the day, and is on file in the Town Clerk's office;

Mayor Merkel stated that the Town Council had the report that Mr. Burke referenced. She stated that they agreed with him on the affordable housing issue and were working toward improving it in town. She appreciated his passion about the subject and thanked him for attending tonight's meeting.

- Barbara Glakas, 935 Barton Oaks Place, Herndon, representing the Cultivating Community Initiative (CCI), encouraged those interested to nominate their neighbors for CCI's Good Neighbor Award. She reviewed the award and how to apply.

PUBLIC HEARING

9. **Ordinance 20-O-01, to consider Zoning Ordinance Text Amendment ZOTA #19-02, to amend Chapter 78 (ZONING), and several articles, 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).**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearings had been duly advertised in the Friday, December 27, 2019 and Friday, January 3, 2020 issues.

Mayor Merkel opened the public hearing and recognized David Stromberg, Zoning Administrator, for the staff report.

Mr. Stromberg presented the staff report and PowerPoint dated January 14, 2020, which are 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 would update existing regulations to align with the Code of Virginia and Federal Communications Commission's (FCC) declaratory ruling. Companion amendments to

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Chapter 66 of the zoning ordinance would be required. He stated small cell service was used for 5G implementation. The antennae for 5G were located closer to the ground and were typically closer together, compared to 4G wireless. He reviewed the 2018 state legislation, which included the term "Administrative Review Eligible Projects" for small cell towers that would be co-located or were a new structure less than 50 feet tall.

Mr. Stromberg discussed the ZOTA requirements and restrictions, which would be applicable to small cell facilities on public or private parcels of land but not to those the right-of-way. He provided images of camouflaged and non-camouflaged small cell facilities, which included one that was part of the town's pilot smart city project. Mr. Stromberg stated that a small cell facility in the Heritage District would require approval from the 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.

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, as it would provide the town a few more options than it currently has, along with a consistent process for applicants.

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

The public hearing was held, and the following individual provided comments:

- Alexander Burke, 910 George's Place Apt. 304, Herndon.

Following the public hearing, Vice Mayor Olem moved approval of Ordinance 20-O-01, as presented. Councilmember Baker seconded the motion.

There were comments from Council.

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

[Note: Attached for reference, at the end of the minutes, is the text of Ordinance 20-O-01.]

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GENERAL

10. **Resolution 20-G-01, 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 (To be continued to January 21 & January 28 meetings).**

Mayor Merkel stated that at the January 7, 2020 work session, Council decided to continue this item to the January 28, 2020 public hearing to allow time to review and discuss this item. She recognized Elizabeth Gilleran, Director of Community Development, for the staff report.

Ms. Gilleran presented the staff report and PowerPoint dated January 14, 2020, which are on file in the Town Clerk's office. She reviewed the history and purpose of the Comprehensive Plan. She discussed staff's outreach to the public during the five-year plan review and what public comment topics were popular. She discussed the plan area, the Planning Commission's resolution, and options for Council action. Drawing on last week's work session, Ms. Gilleran reviewed the direction staff had from Council to ensure staff captured their thoughts, which included:

- Support for art related activities and facilities;
- Support and distinguishing of work force and affordable housing;
- Reference renewable energy infrastructure such as charging stations;
- More information about preservation policies;
- Language to show proactive support for small businesses;
- Language regarding addressing multimodal transportation needs of those with varying abilities; and
- Alternatives to the term "Adaptive" ~ suggestions included substituting the term with "Redevelopment Area," or providing more specific zoning language in future plans. Both options would require an overhaul of the document.

Staff recommends continuance of the item to the next Public Hearing.

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

Councilmember Friedrichs provided comments on substituting the term "adaptive," which she brought up at the last work session.

Councilmember Dhakal stated that while he saw walkability mentioned, he did not see "bike-ability." He would like that included to encourage cycling.

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There was a brief question and answer session between Councilmember Dhakal and Ms. Gilleran about distinguishing the town from Reston and Vienna.

Mayor Merkel echoed Councilmember Dhakal's comments. She stated, for the record, that she thought when people refer to how Herndon is different from everywhere else in Fairfax County, very often they are referring to the downtown and the historical nature of the neighborhoods surrounding the downtown.

Mayor Merkel stated that someone recently shared an article with her that she also saw in the "iFly Dulles" Magazine at Dulles International Airport. One of the features this past fall was getaways in Virginia, Maryland, and West Virginia. Included in the article were St. Michaels, Maryland; Harpers Ferry, West Virginia; and Herndon, Virginia. She read a portion of the article into the record, which she thought was true about the town's sense of place: "the distance from downtown DC is 23 miles. Historic Herndon was first developed as a major rail stop in the 1850s. Its quaint downtown centers on the Herndon Depot, now a museum and visitors center, providing a detailed look at the town's past. It's a good place to start a self-guided tour, and a short walk leads to Lynn Street, Station Street, and Pine Street, all lined with charming historical architecture." Mayor Merkel stated that the article went on to mention a couple of businesses. She did not know if the Council wanted to be as specific as this article in the document. She stated that while there was more to the community than historic architecture and that sense of place; she thought that largely when people refer to "what makes Herndon different," this was what they were referring to.

Ms. Gilleran added to Mayor Merkel's comments and agreed that it was the sense of history that was unique to Herndon in Northern Virginia. This included the landscape in the downtown on places like Grace Street. The town's consultants, when drafting the downtown plan, noted that the downtown was the geographic center of the town. She thought that when individuals reiterated how they want Herndon to be different, it was not only to retain that sense of history, but to translate that into new development as well.

There was a brief question and answer session between Councilmember Baker and Ms. Gilleran about economic development.

Councilmember Baker stated that she receives a lot of feedback about economic development from residents. She stated that while it was mentioned in the document, the reference to economic development seemed minor compared to many other topics.

Ms. Gilleran stated that the hiring of the Economic Development Manager assisted with this area. Staff had also been working to streamline and simplify town processes to assist business owners.

Councilmember Friedrichs echoed Councilmember Baker's comments and stated that they key word in the direction from Council was being "proactive" in showing support for small businesses.

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Mayor Merkel referenced the slide showing the Council's direction to staff, which included distinguishing workforce and affordable housing and support of each. She responded to Mr. Burke's comments about affordable and senior housing that he made during "Comments from the Audience." While she did not believe it was possible to change the town's plans for the downtown at this time, it was listed in the town's upcoming plans and the Council was being proactive and including these types of housing. She thanked Mr. Burke and stated that the Council heard his concerns.

There was a brief question and answer session between Mayor Merkel and Ms. Gilleran about the process for changing the term "adaptive."

Mayor Merkel stated that some of the options for changing the term "adaptive" seemed like a lot of work for staff. She suggested that the town clarify the definition of the term, if it were to remain in the ordinance. She was not opposed to the ideas presented, but she wanted to make sure that staff time was used wisely.

Councilmember Baker moved to continue Resolution 20-G-01 to the January 28, 2020 public hearing. Councilmember Dhakal seconded the motion.

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

CONSENT AGENDA

Mayor Merkel stated that comments were received from Council on some Consent agenda items, which were entered into the record.

Mayor Merkel called for disclosures from Council and stated that she had a disclosure for Ordinance 20-O-03, short-term residential rental registration. She had recused herself in the work session and she would abstain from voting on the Consent agenda.

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 abstain from voting on the Consent agenda, which includes Ordinance 20-O-03, short-term residential rental registration.

Vice Mayor Olem moved approval of the Consent agenda. Councilmember Baker seconded the motion.

In response to queries from Vice Mayor Olem and Mayor Merkel; Lesa Yeatts, Town Attorney, stated that the Consent agenda items were not typically open for discussion, but it was at the discretion of the Chair.

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Mayor Merkel asked Vice Mayor Olem to continue with her comments.

Vice Mayor Olem provided comments on Resolution 20-G-02, Reappointment to the Heritage Preservation Review Board (HPRB), which was mentioned during Comments from the Audience. She discussed a previous resident architect/architectural historian on the HPRB who moved out of town. She stated that he served several one-year terms once he left town, and it had been difficult to find an architect in town that would serve in this position. She stated this was one of the hardest positions to fill.

In response to Vice Mayor Olem's comments, Ms. Yeatts stated that the architect/architectural historian does not have to be a resident. She agreed with Vice Mayor Olem that the town had trouble finding a town resident who was an architect to fill this specific position on the HPRB.

The question was called on the motion, which carried by a vote of 5-0. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, and Vice Mayor Olem voting "Aye." Mayor Merkel abstaining. Councilmember McKenna was absent.

11. Resolution 20-G-02, 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.

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

**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 141st 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**.

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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.

13. Ordinance 20-O-02, 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.

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- (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.

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- (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.

14. Ordinance 20-O-03, 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.

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“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 1st 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.

**January 14, 2020
(public hearing)**

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.

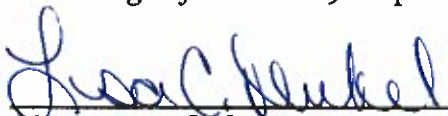
Sec. 11-6. - Administration and Enforcement

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.

3. ADJOURNMENT

There being no further business, the meeting adjourned at 9:06 p.m.


Lisa C. Merkel
Mayor




Amanda M. Kertz
Deputy Town Clerk

Minutes approved by Town Council: January 28, 2020.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

JANUARY 14, 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:

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

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

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

Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.18 78-71.13

3

4

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

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

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>	P	§78-71.13

7

8

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

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

Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.13

11

12

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

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

Antennae of all kinds (except commercial communication towers, freestanding) co-location	P	§78-80.4(c)

Commercial Communication Towers, Freestanding	S	§78-71.13(d)(2)

Small cell facilities on a utility distribution or transmission	P	78-71.13

<i>pole</i>	

15

16

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

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

Antennae of all kinds (except commercial communication towers, freestanding) co-location	P	§78-80.4(c)
Commercial Communication Towers, Freestanding	S	§78-80.4(d)(2) §78-71.13

<i>Small cell facilities on a utility distribution or transmission pole</i>	P	§78-71.13

19

20

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

Table 78-30.4(d)(3): Permitted and Allowed Accessory Uses RM KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
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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>	P	§78-71.13

23

24

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

Table 78-40.1(d)(3): Permitted and Allowed Accessory Uses CC KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	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>	P	§78-71.13

27

28

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

Table 78-40.2(d)(3): Permitted and Allowed Accessory Uses CS KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	CS	Supplemental Use Regulations

Antennae of all kinds (except commercial communication towers, freestanding) co-location	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>	P	§78-71.13

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32

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

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

Antennae of all kinds (except commercial communication towers, freestanding) co-location	P	§78-80.4(c)
Commercial Communication Towers, Freestanding	S	§78-71.13(d)(2)

Small cell facilities on a utility distribution or transmission pole	P	§78-71.13

35

36

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

Table 78-40.4(d)(3): Permitted and Allowed Accessory Uses O&LI KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	O&LI	Supplemental Use Regulations

Antennae of all kinds (except commercial communication towers, freestanding) co-location	P	§78-80.4(c)

Commercial Communication Towers, Freestanding	S	§78-71.13(d)(2)

Small cell facilities on a utility distribution or transmission pole	P	§78-71.13

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40

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

Table 78-50.4(d)(4): Permitted and Allowed Accessory Uses PD-R KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; 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 P	§78-80.4(c)
Commercial Communication Towers, Freestanding	Z	§78-71.13(d)(2)

Small cell facilities on a utility distribution or transmission pole	P	§78-71.13

43

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

Table 78-50.5(d)(4): Permitted and Allowed Accessory Uses PD-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		
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)

	P	

Commercial Communication Towers, Freestanding	Z	§78-71.13(d)(2)

<i>Small cell facilities on a utility distribution or transmission pole</i>	P	§78-71.13

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

Table 78-50.6(d)(4): Permitted and Allowed Accessory Uses PD-D KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; 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) co-location	Z 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	§78-71.13

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51

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

Table 78-50.7(d)(4): Permitted and Allowed Accessory Uses PD-TD KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; 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>	Z 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	§78-71.13

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55

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

Table 78-50.8(d)(4): Permitted and Allowed Accessory Uses PD-TD KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-TD	Supplemental Use Regulations

Antennae of all kinds (except commercial communication	P	§78-80.4(c)

towers, freestanding co-location	P	

Small cell facilities on a utility distribution or transmission pole	P	§78-71.13

57

58

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

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

Antennae of all kinds (except commercial communication towers, freestanding co-location)	Z P	§78-80.4(c)

Small cell facilities on a utility distribution or transmission pole	P	§78-71.13

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62

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.

69 ***

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

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

74 ***

75 **Section 78-71.13. – Commercial Utilities Category.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

135 d. *Lighting, signals and illumination.* No signals, lights or illumination shall be
136 permitted on ~~an antenna~~ *a tower or monopole* unless required by the
137 Federal Communications Commission, the Federal Aviation
138 Administration or the town, provided, however, that on all antenna
139 structures which exceed 100 feet in height, a steady red marker light shall
140 be installed and operated at all times, unless the zoning administrator
141 waives the red marker light requirement upon a determination by the
142 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(e).~~

fe. *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.

gf. *Special exception required for freestanding facilities.* Freestanding communication towers, ~~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).

Table 78-80.2(c): TABLE OF PERMITTED AND ALLOWED ACCESSORY USES & STRUCTURES KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z=Use Allowed Subject to Zoning Map Amendment Approval														
Notes: 1. A blank cell means the use is prohibited in the district; 2. Uses may be subject to use specific standards noted in the last column. ** For Permitted Accessory Uses in PD-TOC see section 78-50.78; For Accessory Uses Permitted and Allowed in PD-W see section 78-50.89														
	Residential Districts				Business Districts						Planned Development District			Suppl Rqrs.
ACCESSORY USE	R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD- R	PD- B	PD- TD PD- D	PD- UR	PD- TOC PD- W	See Section

Antennae of all kinds (except commercial communication towers; freestanding) co-location	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)(2)

Small cell facilities	P	P	P	P	P	P	P	P	P	P	P	P	**	§78-

on a utility distribution or transmission pole																		71.13(d)(3)

260

261

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

Accessory uses and structures listed below shall comply with the following specific standards.

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.

270

- (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:

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

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.

280

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>	\$500.00

282

283

284 **Section 78-180 - Definitions**

285

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

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

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.

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

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;

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

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

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

364 ***

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

366

This is certified to be a true and accurate copy of Ordinance 20-O-01
 adopted at a legally convened meeting of the Town Council of the Town of
 Herndon on January 14, 2020.

Jessica Sizemore

Jessica Sizemore, Legislative Assistant

