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**HERNDON TOWN COUNCIL
Work Session
Tuesday, April 21, 2020**

Pursuant to Virginia Code Section 2.2-3708.2(A)(3) and the Order of the Governor EO-53, and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19) ~ adopted on March 24, 2020, Mayor Merkel has stated that the April 21, 2020 Herndon Town Council Work Session will be by electronic means. The meeting was broadcast and recorded through Cisco Webex and details for the meeting were made available to the public on Thursday, April 16, 2020. In attendance electronically were:

- 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, electronically, during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; and Amanda Morrow Kertz, Deputy Town Clerk.

STAFF ANNOUNCEMENTS

The Deputy Town Clerk introduced herself and welcomed those listening to the virtual Herndon Town Council work session meeting. She stated that as a work session, the public was invited to listen but not participate in Council discussions. The Deputy Town Clerk also stated that the next week's meeting would be a public hearing, and she encouraged the public to provide comments for the record at town.clerk@herndon-va.gov.

**April 21, 2020
(work session)**

The Deputy Town Clerk stated, for the record, that:

- The Town Council meeting that evening was conducted electronically pursuant to Virginia Code Section 2.2-3708.2(A)(3) and the Order of the Governor EO-53, and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19) ~ adopted on March 24, 2020;
- Proper notice of the electronic meeting was provided in accordance with Section 2.2-3708.2 of the Code of Virginia, along with information for viewing the meeting and submitting comments for the record;
- The agenda and meeting materials were available on the town's website;
- Electronic meetings would begin with a roll call and determination of quorum; and
- All votes, including adjournment, would be by roll call vote.

CALL TO ORDER

1. Roll Call & Determination of Quorum

Mayor Merkel called the work session by electronic means to order and asked the Deputy Town Clerk to call the roll for attendance. She stated that as the Deputy Town Clerk calls the attendance, each member of Council should unmute their microphones and respond by clearly stating their name and indicating "present." All members were present, electronically, with Mayor Merkel presiding.

Mayor Merkel stated, for the record, that there was a quorum present, electronically, that evening. She stated that the Town Manager, Town Attorney, Deputy Town Clerk, along with several Information Technology (IT), and other staff members, were present.

Mayor Merkel asked all Members of Council to observe meeting decorum by showing their hand to be recognized for comments. She asked that Members of Council unmute their microphones and state their name for the record before providing comments and/or before making or seconding motions.

2. Comments from the Town Manager

Mayor Merkel recognized the Town Manager for comments.

The Town Manager stated that at last week's meeting, there was a question about the Herndon Farmer's Market. Staff had been in contact with Fairfax County,

**April 21, 2020
(work session)**

who advised that they intended to pilot moving ahead with farmer's markets in a COVID-pandemic world. The county was going to test this pilot program in another part of the county, so Herndon would be delayed in opening the farmer's market for a few weeks, with a start date to be determined.

The Town Manager stated that there was no update about the budget on that night's agenda. Staff was still determining the format in which to provide the updated budget, which he would release to the public by May 1, 2020.

The Town Manager stated that earlier that day, he and Mayor Merkel participated in a conference call with the Virginia Department of Emergency Management and several local government experts. On the call, it was reiterated that localities needed to act under an "austerity model" when planning for the next fiscal year's budget. He stated that towns would have the most revenues at risk during the pandemic, followed by cities, and then counties. On the call, the town was advised to eliminate as much discretionary spending as possible and to freeze capital. He stated that the town had greatly reduced discretionary spending and capital projects, except for those funded by grants or bond proceeds that could only be used for specific projects. The Town Manager stated that three topics of caution were given during the briefing, which were: to plan for a second spike in infection; Business, Professional, and Occupational License (BPOL) tax would be drastically lower next spring; and commercial and retail real estate revenue would also be greatly decreased next year. Each year, the town has underestimated BPOL by \$700,000 to \$900,000, and staff planned to estimate approximately \$1.0 million below budget projections next year, to account for the anticipated shortfall.

The Town Manager stated that the topics that were discussed during the conference call would impact staff's long-range budget planning and it could take a few years to recover. The conversations were along the same lines of what Council and staff had talked about during the past few weeks and staff would take this information into account when planning next fiscal year's budget. He asked if Council had any questions.

There was no Council discussion on the Town Manager's comments.

GENERAL

3. **Ordinance, to amend Ordinance 20-O-23 adopted on March 24, 2020, to suspend certain deadlines and extend the validity of certain development approvals to assure Continuity of Governmental Operations during Pandemic Disaster (COVID-19)**

Mayor Merkel recognized the Town Attorney for the staff report.

**April 21, 2020
(work session)**

The Town Attorney presented the staff report dated April 21, 2020, which is on file in the Town Clerk's office. The proposed ordinance would amend Ordinance 20-O-23, adopted on March 24, 2020, which outlined town operations during the emergency. During the State of Emergency, the town reduced staff physically present and closed its buildings to the general public. While applications and other filings were received and processed by interim methods, current limitations have presented several challenges to staff. The proposed amendments would help the town, its citizens, and the development community, continue to receive town services as consistently as possible without penalty to any party during this disaster. The proposed ordinance would suspend certain deadlines and would automatically extend the validity of certain approvals that would otherwise expire during this period. The suspension would expire 60 days after the town lifted the State of Emergency. Staff recommends approval of the proposed ordinance, as presented.

Mayor Merkel reminded Members of Council to unmute their microphones and state their names for the record when she called on them.

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

There was a brief question and answer session between Councilmember Friedrichs and the Town Attorney, during which the Town Attorney clarified that staff would have issued the permits that would be extended under the ordinance.

There was a brief question and answer session between Vice Mayor Olem and the Town Attorney, during which the Town Attorney clarified that the end date of the extensions under the ordinance would be based on the end of the State of Emergency in Herndon.

In response to comments from Mayor Merkel, the Town Attorney stated that the Council would need to take action to lift the State of Emergency.

There was a brief question and answer session between Councilmember Friedrichs and the Town Attorney, during which the Town Attorney provided further clarifying comments on the applicable permits.

ROUNDTABLE

Mayor Merkel reminded Council that comments needed to be limited to the continuity of business operations or directly related to the emergency to fall in compliance with state code.

**April 21, 2020
(work session)**

1. **Councilmember Friedrichs:** Stated that she understood that the Virginia General Assembly was meeting on Wednesday, April 22, 2020. She asked the Town Attorney if there would be any discussion about loosening the regulations regarding what the Council could discuss during electronic meetings.

The Town Attorney stated that she expected the General Assembly to address the Freedom of Information Act (FOIA) language surrounding electronic meetings. However; she could not say that the restrictions would be loosened. She thought that the General Assembly would try to clarify the conditions under which fully electronic meetings could occur.

Councilmember Friedrichs asked the Town Attorney why the language allowed Council to only discuss matters related to the emergency or continuity of government. She stated this emergency could continue for a long time and she presumed that the Council would need to discuss other matters.

The Town Attorney stated that the language in the Code of Virginia specified what legislative bodies could address under electronic meetings during a Governor-declared State of Emergency.

2. **Vice Mayor Olem:** Thanked town staff for everything they were doing during the State of Emergency. She thanked the Department of Public Works, Herndon Police Department, and other staff for their hard work.
3. **Mayor Merkel:** Stated that through the Town Clerk, she sent several letters to Council that the Governor sent to the Congressional Delegation about flexibility on spending. She stated that a member of Governor Northam's staff would participate on the Northern Virginia Regional Commission "Mayors and Chairs" group conference calls, which would provide a direct link to the Governor's office.

Mayor Merkel stated that she participated in a Zoom call on Monday, April 20, 2020, with Virginia Senators Warner and Kaine, which she said was great. The Senators did not think the next stimulus package would address local government shortfalls, but they were very cognizant of that need. She stated Senator Kaine was especially aware of it because he had served in local government in Richmond. She would keep Council advised if another call like that would be scheduled.

CLOSED MEETING

Mayor Merkel stated that the Council had a need to go into a closed meeting. She asked that, when making or seconding motions, Councilmembers unmute their microphones, respond by clearly stating their name, and keep their microphones unmuted until the conclusion of the roll call vote.

**April 21, 2020
(work session)**

At 7:22 p.m., Vice Mayor Olem moved that the Herndon Town Council go into closed meeting under:

- Section 2.2-3711 (A)(3) to consider the disposition of publicly held real estate in the downtown where discussion in an open meeting would adversely affect the bargaining position or negotiation strategy of the public body.

Councilmember del Aguila seconded the motion.

There were brief comments from Council.

Mayor Merkel stated that when Council went into closed session, there would be a very brief pause during which the IT staff would be working behind the scenes to keep the Council on the call. The Town Manager would take over as host of the meeting and would verify that only the Council and relevant staff were on the call.

The question was called on the motion, which carried by unanimous roll call vote by electronic means. The vote was:

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

RECESS

At 7:22 p.m. Mayor Merkel called a brief recess, and at 7:24 p.m., the closed meeting reconvened by electronic meeting using Cisco Webex, all members present, and with Mayor Merkel presiding.

Mayor Merkel asked if there was anyone present whose name she did not call. Hearing none, the closed meeting continued.

CLOSED MEETING

On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the Herndon Town Council reconvened in public session at 8:38 p.m.

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

**April 21, 2020
(work session)**

On motion of Councilmember Dhakal, seconded by Vice Mayor Olem, and carried by unanimous roll call vote by electronic means, 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 (electronically) – 7

Nays – 0

ABSENT DURING VOTE: 0

ABSENT DURING MEETING: 0

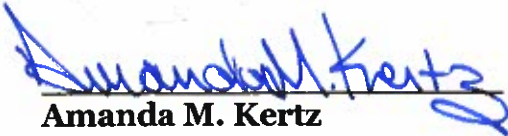
**April 21, 2020
(work session)**

ADJOURNMENT

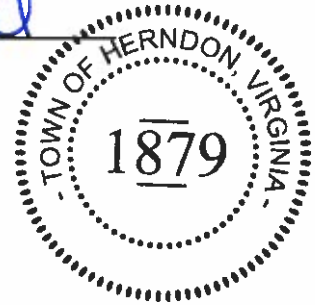
On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the meeting of the April 21, 2020 work session was adjourned at 8:39 p.m. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."



**Lisa C. Merkel
Mayor**



**Amanda M. Kertz
Deputy Town Clerk**



Minutes approved by Town Council: April 28, 2020.