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HERNDON TOWN COUNCIL
Tuesday
April 28, 2020

Pursuant to Virginia Code Section 2.2-3708.2(A)(3), as amended, 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 28, 2020 Herndon Town Council Public Hearing would 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 23, 2020. In attendance electronically were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Jennifer Baker; Cesar del Aguila; Pradip Dhakal; Signe Friedrichs; and Bill McKenna.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; and Amanda M. Kertz, Deputy Town Clerk.

Staff Announcements

Amanda M. Kertz, Deputy Town Clerk, welcomed those listening to the April 28, 2020 public hearing. She stated that tonight's regularly scheduled Herndon Town Council meeting was a virtual meeting and that the public was encouraged to provide comments for the record at town.clerk@herndon-va.gov. She 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), as amended, 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 Mar 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;

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- 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 public hearing by electronic means to order at 7:00 p.m. and welcomed those who were joining the meeting over Webex. She then asked Ms. Kertz, Deputy Town Clerk, to call the roll for attendance and for each Councilmember to respond by clearly stating their name and indicating they were 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. William H. Ashton II, Town Manager and Lesa Yeatts, Town Attorney, were also present.

Moment of Silence

Mayor Merkel asked that, before starting that evening's meeting, the Council hold a moment of silence in memory of their dear friend, Darryl "Smitty" Smith, who passed away on Sunday, April 26, 2020. She stated that he was a 30-year member of the Herndon Police Department and he was beloved by all. Herndon town flags would be flown at half-staff in his honor through May 4, 2020. She stated that he would be dearly missed by everyone in the community.

Announcement

Following the moment of silence, Mayor Merkel asked that those on Council physically raise their hand if they wished to speak, because it would be easier to see than the hand raise icon on the screen. She asked Council to unmute their microphones and to start their comments, motions, or seconds by stating their name when she recognized them.

2. COMMENTS FROM THE TOWN MANAGER

Mayor Merkel recognized William H. Ashton II, Town Manager, to provide an update on the continuity of operations and matters related to the emergency, followed by questions of Council.

Mr. Ashton stated that all town services have remained the same since his update at last week's meeting. From a financial perspective, he stated that staff continued to watch revenues and expenditures very closely. The town received sales, meals, and transient occupancy taxes monthly and the town was performing slightly above staff's estimates.

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Mr. Ashton stated that the town still had a need to use some of the revenue stabilization fund this fiscal year and he would keep the Council updated on that process.

Mr. Ashton stated that the next Council meeting would include the discussion of the town's fiscal year (FY) 21 budget, which was released on April 1, 2020. Staff was making dramatic changes to the proposed budget that they would brief the Council about next week. The updated budget would be released to the Council and the public by May 1, as Mr. Ashton had promised.

Mr. Ashton stated that reopening the town buildings and restarting all services was on the minds of many citizens. He stated that he participated in a weekly conference call with Fairfax County's Director of the Department of Health, Dr. Gloria Addo-Ayensu ("Dr. Gloria"). In a briefing last week, Dr. Gloria stated that reopening would not be based on a date, but would be based on the signs and conditions on the ground. Mr. Ashton also spoke with the Loudoun County Director of Health last week, who advised him that they were looking at the current conditions and not the prediction models. Mr. Ashton stated that the departments of health he talked to were thinking about socio-economic impacts related to the State of Emergency, including job loss, alcohol abuse, domestic issues, and suicide rates. These conditions would be part of the decision process for reopening. Before reopening, there would need to be many more tests in stock, more personal protective equipment, and increased staff at the various county health departments to conduct contact tracing. The county health departments reiterated to Mr. Ashton that the "stay at home" policy was working and the community was flattening the curve with that policy. Once reopening started, social distancing would still be necessary for those who were at higher risk of contracting COVID-19. Mr. Ashton stated that one of the issues with reopening was that once it starts, it would be a very slow process, since there would be a two-to-four week lag time to know if the reopening would cause an additional outbreak. He stated that it would take some time to determine whether it would be safe to move to the next level of reopening.

Mr. Ashton stated that the Fairfax County locality managers would meet with Dr. Gloria weekly and he looked forward to updating the Council as information became available.

APPROVAL OF MINUTES

Vote on April 14, 2020
Public Hearing Minutes

On motion of Councilmember McKenna, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the minutes of the April 14, 2020 public hearing were approved. The vote was: Councilmembers Baker, Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

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**Vote on April 21, 2020
Work Session Minutes**

On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the minutes of the April 21, 2020 work session were approved. The vote was: Councilmembers Baker, Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

3. COMMENTS FROM THE TOWN COUNCIL

Mayor Merkel reminded Council that comments should be limited to continuity of business and the State Of Emergency to comply with state code requirements. She asked the Council to unmute their microphones and state their name when she recognized them for comments.

Vice Mayor Olem: Thanked town staff for continuing to take care of the community. She specifically mentioned the Herndon Police Department, who she had noticed sitting in parks when there were large groups of people out. She looked forward to seeing people again.

Councilmember Dhakal: Thanked the Town Manager, William H. Ashton II, for providing timely updates on the State of Emergency. He echoed Vice Mayor Olem's comments thanking town staff for taking care of daily operations during this time.

Councilmember del Aguila: Asked if the town would suspend deadlines or requirements for inspections and registration during the State of Emergency.

Mayor Merkel asked Councilmember del Aguila to clarify if he was referring to vehicles, which he responded that he was.

Mayor Merkel recognized the Town Attorney and Town Manager for comments.

Lesa Yeatts, Town Attorney, stated that state law governed licensing and inspections. She stated that the Governor of Virginia had not issued any orders suspending enforcement of the motor vehicle laws.

Mr. Ashton stated that there were some changes because the Department of Motor Vehicles (DMV) facilities were currently closed. He stated that if a vehicle registration had expired in March or April, the owner would have a grace period until the DMV reopened. He stated if the vehicle registration expired in January or February, violations could be enforced.

In response to queries from Councilmember del Aguila, Mr. Ashton stated that if a vehicle's tags read March or April 2020, there was a grace period until the DMV reopened. If the vehicle's tags read February 2020 or earlier, there was no grace period.

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Mayor Merkel stated that the Chief of Police also mentioned this change to her.

Councilmember Baker: Echoed her colleagues' comments thanking town staff. She stated that employees were making the best of the situation under difficult circumstances. She enjoyed still seeing Department of Public Works employees on her daily walk.

Councilmember Friedrichs: Echoed her colleagues' comments thanking town staff.

Councilmember Friedrichs stated that she had heard from many people on all different levels that they would miss Darryl Smith. She had received condolences to the town from those who were deeply sorry for his loss.

Mayor Merkel agreed with Councilmember Friedrichs and stated it was weighing deeply on everyone's minds and hearts.

Mayor Merkel: Reiterated what the Town Manager mentioned earlier about the FY 21 budget hearings. She stated that the Council typically discussed the budget in April each year. However; due to the current emergency, the change in revenue streams, and the unknowns, the Town Manager and Town Council had postponed the budget hearings. The Council would hold work sessions on May 5 and May 19, 2020, with public hearings ~ which would all be virtual at this point ~ on May 12 and May 26, 2020, to discuss the budget. She stated that there would be a mechanism to provide live comments during the public hearings on May 12 and May 26, 2020. The Council also welcomed comments through email at town.clerk@herndon-va.gov. She encouraged the public to continue providing their comments and thoughts. Mayor Merkel stated that the budget must be passed by June 30, 2020, which would be the end of the current fiscal year.

GENERAL

4. **Ordinance 20-O-26, 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 Lesa Yeatts, Town Attorney, for the staff report.

Ms. Yeatts presented the staff report, dated April 21, 2020, which is on file in the Town Clerk's office. The proposed ordinance included amendments to Ordinance 20-O-23 that the Town Council adopted on March 24, 2020. Staff anticipated that the Council would have to amend the continuity of government ordinance as different situations arose and as the Governor changed his orders during this emergency. She stated that this specific amendment would allow for the suspension of certain deadlines and the extension of the validity of certain staff-issued permits. While staff continued to process applications and other filings by the interim methods, current limitations presented

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challenges that this amendment would address. The proposed amendments would allow town staff, its citizens, and the development community, to continue to receive town services as consistently as possible without penalty during this disaster. The amendment would take effect immediately after Council action and would expire 60 days after the town lifted the town-declared State of Emergency. Ms. Yeatts provided an example of what would happen to a permit that expired either on or before the town lifted the State of Emergency. She recommended that those with questions about their permits or expiration dates should call the department or individual that had issued them. Staff recommends approval of the proposed ordinance, as presented.

There was a brief question and answer session between Mayor Merkel and Ms. Yeatts.

In response to queries from Mayor Merkel, Ms. Yeatts confirmed that the Council had to take action to lift the State of Emergency. She confirmed that staff expected additional amendments to Ordinance 20-O-23, Continuity of Government. At next week's work session, the Council would review one of these amendments regarding what localities could discuss at electronic meetings during a State of Emergency.

Vice Mayor Olem moved approval of Ordinance 20-O-26, as presented. Councilmember Dhakal seconded the motion.

There were brief comments from Council.

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

Ordinance 20-O-26, 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).

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

WHEREAS, on March 24, 2020, Town Council adopted Ordinance 20-O-23 addressing Continuity of Governmental Operations during Pandemic Disaster (COVID-19); and

WHEREAS, it has become necessary to make amendments to this Ordinance in order to suspend certain deadlines and extend the validity of certain development approvals to further assure continuity of governmental operations during Pandemic Disaster (COVID-19).

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NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia that to the extent possible, town staff will endeavor to take action as is practical and appropriate to meet deadlines or time frames established under state law or town ordinances, however, notwithstanding any provision of law, regulation, or policy to the contrary, any deadlines requiring action by the town, any public body, or town employees are suspended. Time frames for review or expedited reviews are also suspended. Failure to meet any deadline or time frame will not constitute a default, violation, approval, ratification, or recommendation. Any policies or procedures inconsistent with this ordinance are hereby suspended; and

IT IS FURTHER ORDAINED that any staff approved plan, plat, permit, modification, waiver or determination that would have otherwise expired during the disaster and before the expiration or repeal of this ordinance, will remain valid until 60 days following the lifting of the state of emergency declared by the Town; and

IT IS FURTHER ORDAINED that this Ordinance to amend Ordinance 20-O-23 shall be effective upon its adoption.

[Note: Attached for reference is Ordinance 20-O-23, dated March 24, 2020, identified as the Exhibit.]

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TOWN OF HERNDON, VIRGINIA

ORDINANCE

MARCH 24, 2020

Ordinance- to Implement Emergency Procedures and Effectuate Temporary Changes to Address Continuity of Governmental Operations during Pandemic Disaster (COVID-19).

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

WHEREAS, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a state of emergency for the Commonwealth of Virginia arising from the novel coronavirus (COVID-19) pandemic; and

WHEREAS, Executive Order Fifty-One acknowledged the existence of a disaster as defined by Virginia Code Section 44-146.16 arising from the public health threat presented by a communicable disease anticipated to spread; and

WHEREAS, Executive Order Fifty-One ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive "any state requirement or regulation" as appropriate; and

WHEREAS, on March 24, 2020, the Town's Emergency Management Coordinator issued a Declaration of Emergency and Disaster, applicable throughout the entire Town of Herndon, Virginia pursuant to the Town's Emergency Management Plan and Virginia Code Sections 44-146.21; and

WHEREAS, also on March 24, 2020 the Town Council affirmed the existence of a disaster and declared a state of emergency and disaster throughout the entire Town that remains active; and

WHEREAS, Virginia Code Section 15.2-1413 provides that a locality may, by ordinance, provide a method at variance with general or special laws to assure continuity of government in the event of a disaster for a period not to exceed six months; and

WHEREAS, Virginia Code Section 44-146.21(C) further provides that a local director of emergency management or any member of a governing body in his absence may upon the declaration of a local emergency "proceed without

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regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to performance of public work;" and

WHEREAS, Virginia Code Section 2.2-3708.2(A)(3) allows, under certain procedural requirements including public notice and access, that members of Town Council may convene solely by electronic means "to address the emergency;" and

WHEREAS, the open public meeting requirements of the Virginia Freedom of Information Act are limited only by a properly claimed exemption provided under that Act or "any other statute;" and

WHEREAS, federal and state guidance from the executive branch has recommended suspension of public gatherings of more than ten attendees; and

WHEREAS, due to the Declaration of Emergency and Disaster and the limitations on interpersonal contacts and public gatherings it is necessary to delegate to the Town Manager certain responsibilities and powers in order to preserve the continuity of operations.

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia that the Town Manager or his designee shall, in addition to all powers otherwise granted by the federal, state and local law, for the duration of the local emergency declaration not to exceed six (6) months, be empowered with all responsibilities and powers, heretofore conferred upon the Town Council, by the Town's Internal Administrative Policies, Resolution 18-G-29, be enabled to approve any transaction pursuant to Chapter 30, Section 30-311 of the Town Code, be empowered to re-direct or suspend town services to preserve the public health and safety, be enabled to take actions to preserve the health and safety of employees including any action taken under Section 54-61 of the Town code relative to administrative leave, and be empowered to sign all negotiable instruments necessary for the function and continuity of Town operations

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia that agenda items scheduled or proposed to be considered for the duration of the local emergency declaration not to exceed six (6) months by the Town Council, Planning Commission or any other Town board or commission shall be deemed continued for the duration of the local emergency declaration not to exceed six (6) months, if the Town Council, Planning Commission or other Town board or commission does not take action on the agenda item during the referenced timeframe, including those agenda items for which state

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or local law requires an affirmative action to be taken within a statutorily-mandated time frame and the failure to act can be deemed an approval; and

IT IS FURTHER ORDAINED that notwithstanding the foregoing, Town Council, Planning Commission: and any other Town board or commission may, at their election, conduct previously scheduled meetings or special meetings and act upon scheduled or purposed agenda items before them for the duration of the emergency declaration thereafter, under normal procedures or by solely electronic means in compliance with public notice, access, and other requirements of Virginia Code Section 2.2-3708.2(A)(3) to the extent practicable; and

IT IS FURTHER ORDAINED that in the event that a public hearing matter is deemed by the applicable governing body to present a critical government function essential to continuity of government for the duration of the emergency declaration, the public hearing may be conducted by an open public comment period called for during an electronic meeting, in which case, action by the governing body shall be continued to a subsequent meeting pending receipt of such comments. Public comments shall be received by written submittal (including but not limited to email) delivered to the Town Clerk or designee during the period stated in the call for public comments which comment period shall be a minimum of six calendar days.

IT IS FURTHER ORDAINED that Town Council reserves the right by subsequently enacted ordinance to rescind or amend this ordinance. An emergency and disaster is deemed to exist and this ordinance shall be effective upon its adoption.

This is certified to be a true and accurate copy of Ordinance 20-O-23 adopted at a legally convened meeting of the Town Council of the Town of Herndon on March 24, 2020.


Margie C. Tacci, Deputy Town Clerk

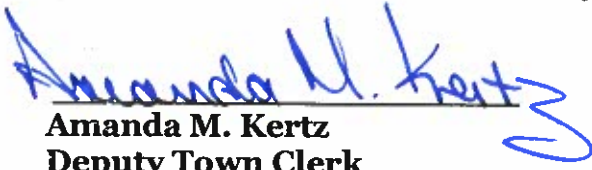
Attached for reference is the Town's Internal Administrative Policies, Resolution 18-G-29, May 22, 2018.

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5. 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 28, 2020 public hearing was adjourned at 7:24 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: May 12, 2020.

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NOTE:

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