TOWN OF Herndon VIRGINIA

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HERNDON TOWN COUNCIL
Work Session
Tuesday, July 7, 2020

Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended, Mayor Merkel has stated that the July 7, 2020 Herndon Town Council Work Session 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, July 2, 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 during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Jennie Tripoli, Director of Finance; Tammy Chastain, Deputy Director of Public Works; and Viki Wellershaus, Town Clerk.

STAFF ANNOUNCEMENTS

The Town Clerk welcomed those listening to the July 7, 2020 work session. She stated that night's regularly scheduled Herndon Town Council meeting was a virtual meeting. Next week's meeting would be a public hearing and 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, as amended;
  - ❖ the Governor's Executive Orders, as amended; and
  - ❖ in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended.
- 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 July 7 work session by electronic means to order and asked the 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. As the Town Clerk had stated, Mayor Merkel stated that the meeting that evening was being conducted pursuant to the appropriate laws associated with the COVID-19 pandemic disaster.

Mayor Merkel asked Members of Council to observe meeting decorum by showing their hands to be recognized by the Chair for comments. 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 the Town Manager for an update on the continuity of operations and matters related to the emergency.

The Town Manager provided a brief update on COVID-19 related developments that had occurred since the Council last met.

The Town Manager stated that, through that day, county-wide testing had continually increased while positive test counts had decreased. He also stated that, of those who were deceased, 86 percent of those deaths occurred in patients in the 65 and older range. He also shared that the data was troubling concerning the disproportionate number of cases being experienced by the Latino community and cited county records that, although the Latino population accounts for 16 percent of Fairfax County, they account for 61 percent of positive cases.

There was a brief question and answer session between the Town Manager and Councilmember Friedrichs clarifying the percentages that the Town Manager had shared.

After clarifying that 16.2 percent of the county population and 61.7 percent of the cases were Latino, the Town Manager stated that the numbers were stark and troubling and further shared that the 20170 (Herndon) zip code had the fifth most cases in the county of 48 zip codes based on a percentage per 100,000 residents. He stated that this number was twice the number of cases of the average zip code in the county, and it showed a 2.6 percent infection rate for Herndon's zip code.

Noting the Latino population in the community, the Town Manager stated that he was working closely with the county to get expanded testing options and care options available for lower-income and Latino communities in addition to that which was being provided by Healthworks on South Elden Street.

The Town Manager stated that the county health department was working to hire contact tracers and they would need 30 contact tracers per every 100,000 people. He also stated there was a need for about 300 contact tracers, 70 community health care workers, 100 case interviewers, 200 contact interviewers, and 35 nurses.

The Town Manager stated that, according to Dr. Gloria, the critical immediate needs for lower-income residents were food, medicine, thermometers, masks, and rent assistance while being quarantined. The county was working to provide these items and he would keep an eye on it to make sure Herndon received its fair share. He stated that the downtown area was abuzz with activity and he stated that in case the town sees a rebound in infection, he wanted to be positioned in the best way to protect the community. He stated that, at that time, the county

health department continued to stress that people were safest staying at home, washing their hands, and wearing face coverings. He stated that those who are not feeling well should let those around them know.

The Town Manager then reiterated the need to stay home and quarantine if one was not feeling well, and he stated that town staff had no known staff exposures in the week prior. He stated that was the first time that had happened since March. The Town Manager stated that the town had gotten ahead of the federal government mandate with policies which had kept the case count low and had allowed the town to experience its first week with no people using the special COVID-19 leave category that had been created.

The Town Manager then provided updates about town operations and facilities including the sneeze-guards that were installed in the Herndon Municipal Center (HMC) for social distancing customer service. He also stated that yard waste was being picked up again at that time, and the town was advertising special bulk item collection through September 4, 2020, with no fee since there was no Spring Cleanup that year. He stated that citizens should work with the Department of Public Works (DPW) to schedule.

For town parks, the Town Manager stated that there were tennis court repairs going on and other tennis courts and ballparks were open.

The Town Manger stated there had been discussions with the Dulles Regional Chamber of Commerce about Friday Night Live. This included the financial elements and risks such as a social distancing attendance control plan. He stated he had no additional data about a social distancing plan to share at that time.

The Town Manager then provided Council with an update on the town's finances and revenues and referred to a PowerPoint presentation dated July 7, 2020 which is on file in the Town Clerk's office. He stated the PowerPoint would focus primarily on the General Fund at that time. He stated that staff and Council first discussed numbers related to the pandemic on April 7, 2020 and that those numbers were rudimentary based on initial projections. He then recapped the various strategies employed by staff to preserve cash and the cash flow to buy time and keep decision making at an incremental level.

The Town Manager also stated that staff had been consulting with experts and some of those tools would be discussed later that evening. The Town Manager explained the chart on page five of the PowerPoint and stated that the town was projected to finish FY 2020 at around $35 million, and he stated that beyond some big maintenance items that needed to be addressed, the town had been able to put off most spending and expenditures. He stated that initially, staff had thought there would need to be about $400,000 to $500,000 taken from the revenue stabilization fund to hit target numbers, but at that time, there was no

need to touch the revenue stabilization fund. He stated that, based on the unaudited numbers, the town would end up with a modest surplus for FY 2020, due to how well staff had handled the situation, a very healthy Business, Professional, and Occupational License (BPOL) revenue, and meals tax doing better than anticipated. He stated that some of the meals tax success had to do with the outdoor seating, fair weather, and delivery businesses. He stated that transient lodging tax was still a big risk area, and he provided information about sales tax revenue and he stated it would match pretty closely to the projected numbers.

The Town Manager then stated that the use of Coronavirus Aid, Relief, and Economic Security (CARES) Act money also contributed to the town not needing to use the revenue stabilization fund, which would remain fully funded at around $1.8 million. Strict spending, deferred costs, and deferred training were a short-term "lifeboat" and would not be sustainable in the long-term. He stated that if the current situation became a long-term issue, the town would have to look at its service offerings to bring some of the maintenance and training options back online. The Town Manager stated that he thought the town managed its way through FY 20 with limited damage.

The Town Manager stated that the town would use the same concepts to manage moving forward with FY 2021. He reviewed the sequestered funds for FY 21, which were $5.8 million in capital and operations and maintenance (O&M) expenditures. He stated that staff was looking at everything through a gating system based on revenue targets and restructuring debt. Staff had not yet set the revenue targets that would allow the town to either release sequestered funds or make further cuts. He stated staff did not yet know COVID's effects on real estate, BPOL, charges for service, or the duration of the economic impacts. He stated that restaurants were reporting a decline in lunchtime business due to increased teleworking and that a robust lunch crowd would be very important for maintaining the restaurants in the town.

The Town Manager stated that other questions included uncertainty about cases spiking in the future and how the governor would respond. He stated the town would have to remain flexible and the philosophy the Council had allowed was working to preserve fund balance and restrict expenditures so far. He emphasized that if this crisis was prolonged, there would have to be discussions about service offerings and having some activities come back online that would be necessary for a healthy organization to pursue.

Questions of Council

In response to queries from Vice Mayor Olem, the Town Manager stated that residents could call DPW to discuss bulk items and schedule a special pick-up. He stated that staff could schedule 10 to 12 pick-ups per day.

Mayor Merkel asked those on Council to display their video on Webex, if possible.

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

In response to queries from Councilmember Friedrichs, the Town Manager confirmed that the disproportionate cases in the Hispanic population were county-wide. He stated that the county health department was getting information out and the Herndon Police Department (HPD) had also translated and passed out informational materials. A few weeks ago, the Chief of Police and HPD had assisted with a food distribution where they passed out masks. He reiterated that access to these items was necessary for residents to stay quarantined, and he stated he would mention that to Dr. Gloria in his call later that week. He stated the town was putting out information on all social media and the town message board in both languages. He was open to suggestions to communicate more effectively to address these stark numbers.

Councilmember Friedrichs then asked if the HPD translated documents were available to share with their personal networks, and the Town Manager stated he would follow-up with her and look into that.

Mayor Merkel added that a lot of local faith groups were also trying to help with getting the word out about resources in the community, which she appreciated.

Councilmember del Aguila stated, for the record, that the video on his Webex was in and out, but he still had audio.

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

Councilmember del Aguila drew attention to page 10 of the Town Manager's PowerPoint and stated that he would like the town to "swallow the pill" to anticipate what would happen in the future, such as commercial real estate "tanking" and what the numbers would look like for the rest of the half of that year.

Responding to Councilmember del Aguila, the Town Manager stated that he had a plan for going forward, but before he started putting more specificity to it, he thought the Council should look at this from a service-related perspective. This included what services the town could reduce or continue, and how that would impact the town's residents and business.

Councilmember del Aguila then asked if the goal was to not touch the sequestered funds or revenue stabilization fund, and he asked how bad of a situation they

needed to prepare for. He thought the town would need to use the sequestered funds and the stabilization fund, and the town should proceed with those assumptions.

The Town Manager responded to Councilmember del Aguila's inquiries by stating that the town was looking at a debt-restructuring plan and that looking at the situation with a "hope for the best but expect the worst" mentality was prudent. He stated that the sequester was unsustainable with so much maintenance and training funds being tied up, and he stated that they would need to have a conversation about services moving forward.

Councilmember del Aguila then stated that he thought they needed to add to the reserve fund cushion the town currently had for operating expenses.

Responding to Councilmember del Aguila, the Town Manager discussed the town's five main reserve funds. He stated that the town's unassigned fund balance was approximately 29-30 percent of operating budget, which by policy, had a 20 percent floor. The town's reserve funds were untapped and did not have to be used in FY 20. He emphasized moving forward with the challenges the town would face.

In response to queries from Mayor Merkel, the Town Manager confirmed that the Council would need to have a policy decision discussion at a future work session.

Vice Mayor Olem then shared personal comments about the Hispanic community. She stated that her older son lives in Four Seasons in the town, where he noticed many individuals wearing masks. She thought this was a direct result of HPD going and passing out information in the community.

The Town Manager stated that he was encouraging anything to get the word out.

Councilmember Dhakal then provided comments about increasing communications by using the informational electronic signs in the town with both English and Spanish. The Town Manager agreed and stated that they could re-program and re-deploy those signs throughout the town.

COMMENTS FOR THE RECORD

Mayor Merkel asked the Town Clerk whether she had received comments for the record on any items listed on that evening's agenda, and the Town Clerk stated that she had not received any comments for the record.

July 7, 2020
(work session)

DISCLOSURES

Mayor Merkel asked the Town Clerk whether she had received any Transactional Disclosure Declarations from Council on any items listed on that evening's agenda. The Town Clerk stated that she had received signed Transactional Disclosures from Vice Mayor Olem pertaining to the first two public hearing items

Disclosure

The Town Clerk entered into the record a signed Transactional Disclosure Declaration that she received for the lease amendments for the town's 3rd Street and Alabama Drive water towers to Cellco Partnership d/b/a Verizon Wireless pursuant to Sections 2.2-3112(B)(2)(3) and 2.2-3115(G), of the Code of Virginia. She stated, for the record, that:

- **Vice Mayor Olem** provided a signed statement for the record, stating that she is an owner a commercial property in North Augusta, South Carolina. The group she leases to is in the Verizon Global Real Estate division of Cellco Partnership d/b/a Verizon Wireless, out of Temple Terrace, Florida. The statement indicated that she is able to participate in the discussion and action on the applications fairly, objectively, and in the public interest. She filed the appropriate disclosure with the Town Clerk and Town Attorney.

PUBLIC HEARINGS

3. **Ordinance 20-O-19, to approve and authorize the Mayor to sign a second lease amendment to Cellco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, and drawings at the Town's 3rd Street Water Tower. (Public Hearing continued from the April 14th TCPH).**

Mayor Merkel stated that this item had been continued from the March 10 and April 14, 2020 meetings.

Mayor Merkel recognized the Deputy Director of Public Works for the staff report. The Deputy Director of Public Works presented the staff report, originally dated March 3, 2020, which is on file in the Town Clerk's office. She stated that the original lease agreement at the Third Street Water Tower between the town and Cellco Partnership, was dated June 9, 2002, and was first amended on August 12, 2012. The lease would expire on August 31, 2027. The proposed second amendment would update the equipment list, size, and types. The terms of the

monthly rent would remain unchanged and the lessee was subject to a three percent yearly escalation as per the original Deed of Lease. Staff recommends approval of the proposed ordinance, as presented.

There was brief discussion amongst Council and staff on this item, and the Deputy Director of Public Works confirmed there were no changes since the last staff report in response to queries from Councilmember Dhakal.

4. **Ordinance 20-O-40, to approve and authorize the Mayor to sign a second lease amendment to Cellco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, and drawings at the Town's Alabama Drive Water Tower.**

Mayor Merkel stated that the Town Clerk had previously entered Vice Mayor Olem's disclosure on this item into the record.

Mayor Merkel asked if any written comments were received for the record on these items, and the Town Clerk stated that staff had not received any comments to enter into the record.

Mayor Merkel recognized the Deputy Director of Public Works for the staff report.

The Deputy Director of Public Works presented the staff report dated July 7, 2020, which is on file in the Town Clerk's office. The original lease agreement at the Alabama Drive Water Tower by and between the town and Cello partnership, d/b/a Verizon Wireless, was dated February 15, 2008, and a first amendment was executed on August 15, 2012 providing three additional five-year amendments to the deed of lease. This proposed second amendment would revise the quantity and upper size limit of several pieces of equipment. She stated that the terms of the monthly rent would not change, and the lessee was subject to a three percent yearly escalation as per the original Deed of Lease.

There was brief discussion amongst Council and staff on this item, and the Deputy Director of Public Works confirmed that this was not an operating water tower in response to queries from Vice Mayor Olem.

BUDGET ITEMS

5. **Resolution 20-G-18, to authorize the Reserve of FY 2020 Funding for Capital and On-going Projects and for Outstanding Encumbrances at June 30, 2020; and**

6. **Ordinance 20-O-41, to consider amending the Fiscal Year (FY) 2021 Adopted Budget which, if adopted by Town Council, will amend the budgets of the General Fund, Water and Sewer Fund, Chestnut Grove**

Cemetery Fund, Downtown Parking Enterprise Fund, and Capital Projects Funds by recognizing the estimated outstanding encumbrances and authorized reserved amounts for FY 2020 as appropriated amounts for FY 2021.

Mayor Merkel recognized the Director of Finance for the staff reports.

The Director of Finance presented the staff reports dated July 7, 2020, which are on file in the Town Clerk's office. She stated that these two were procedural items that would give the town authorization to spend money on items and reserve funds for projects that were not completed by June 30, 2020. These items were restricted to those that were funded by external sources and things that would be more expensive to cancel than move forward. The proposed items would give the town the legal right to continue spending while they close out the year. She stated she would come back to council in September with reconciliations of these items.

In response to Mayor Merkel, the Director of Finance confirmed that these were concurrent staff reports. She clarified that the first item would reserve the funding as of June 30, 2020, and the second item was the FY 21 amendment to appropriate the funds.

Mayor Merkel stated, for the record, that the Council could ask questions of staff both on Resolution 20-G-18 and Ordinance 20-O-41.

There was no further discussion on these items.

GENERAL

7. **Resolution 20-G-19, to change the Meeting Schedule for the Town Council Work Session in August 2020.**

Mayor Merkel stated that there would be no staff report on this item. She stated that since National Night Out was rescheduled this year because of COVID-19, the proposed resolution would move the Wednesday, August 5 Work Session to Tuesday, August 4, 2020.

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

In response to Councilmember Dhakal's queries, the Town Manager confirmed that National Night Out was tentatively moved to October 6, 2020.

Mayor Merkel stated that the Council would need to look at the agenda on Tuesday, October 6, to see if a change needed to be made on that date as well.

Following discussion and with the concurrence of Council, Mayor Merkel asked to place this item on the Consent agenda for next week's meeting.

8. **Resolution 20-G-20, to approve the restructuring of some of the town's debt.**

Mayor Merkel recognized the Town Manager while the Director of Finance prepared to introduce the consultants, Kyle Laux, Senior Vice President, Davenport & Company, and Chris Kulp, Partner, Hunton Andrews Kurth, LLP.

The Town Manager provided brief comments. He stated that earlier in the meeting, Councilmember del Aguila questioned if the previously sequestered money for FY 21 was enough. Staff had been meeting with the town's consultants at Davenport and with Mr. Kulp, the town's bond attorney, about restructuring some of the town's debt to address the cash flow issues. Some factors to consider were that the town had a major debt service payment due at the beginning of August and that interest rates were currently very favorable. The Town Manager stated that if this was something the Council wanted to do; they would have to vote on it at next week's meeting to close on it before the August 1, 2020.

The Director of Finance introduced and turned the presentation over to Mr. Laux and Mr. Kulp.

Mr. Laux presented the staff report and PowerPoint dated July 7, 2020, which are on file in the Town Clerk's office. He gave kudos to Council and town's management for how they managed through the end of FY 2020 based on the preliminary unaudited numbers, but he cautioned that as advisors to the town, they were a long way from "being out of the woods." He stated that they saw a challenging path forward and echoed the Town Manager's earlier comments about "hoping for the best and planning for the worst." Mr. Laux stated that the town has a AAA rating which is the highest possible for a local government, and he would like to see the town take advantage of the historically low interest rates to manage cash flow for budget years into the future.

Mr. Laux stated that he wanted to maintain the town's current credit ratings. He stated that rating agencies look at a variety of factors, and he highlighted the importance of fund balance. He stated that the town was set up to have multiple layers of defense since there was a long way from the start of the new fiscal year with an incredible amount of uncertainty.

Mr. Laux reviewed the town's existing outstanding General Fund debt, which was approximately $12.0 million. He discussed strategies that would allow the town to take advantage of current borrowing rates, while utilizing its excellent credit ratings, to lessen the potential impact on the FY 21 fund balance in a responsible way. This included taking a portion of the existing debt, or approximately

$6.0 million, primarily in the General Fund, which was tied to some existing bond issues. The town would look to refinance and reshape that amount with the goal to bring the rate down, lower the town's total debt service level, so that the town could have more "breathing room" to manage through FY 21 and several years beyond. Of the $6.0 million, about $5.0 would be tax-exempt while $1.0 would be taxable, as based on the tax code.

Mr. Laux further outlined proposed refunding strategies for the portion of the town's debt that would maintain compliance with its financial policies. He stated that the proposed strategies would lower the town's annual debt service payment, as detailed on pages seven and eight of the PowerPoint. Starting in FY 21, the payment could drop from approximately $1.75 million to about $1.0 million. To account for potential spill-over effects into subsequent fiscal years, Mr. Laux proposed flattening the annual debt service level to the approximately $1.0 million amount. This would occur by changing the timing of some of the town's payments while maintaining their maturity dates and producing an estimated breakeven present value cost/benefit when the "time value" of payments over the next 10 years was taken into account.

Mr. Laux concluded his presentation on pages nine and 10 of the PowerPoint. He emphasized that to accomplish the town's goals with the debt service by the August 1 payment deadline, he recommended using a Competitively Bid Direct Bank Loan. The town would be able to competitively bid the financing to national, regional, and local banking institutions. Mr. Laux stated he should have the results of the bidding, along with the interest rates, savings, and payment levels, prepared for next week's meeting and he should be able to recommend which bank would make the most sense moving forward.

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

[Note: At 8:20 p.m. the Webex audio cut out and started working again at 8:29 p.m. The discussion in between these two times was not captured.]

In response to queries from Councilmember del Aguila, Mr. Laux stated that starting in FY 21 and FY 24, the proposed process would free up about $2.4 million. In FY 25, the debt payment would be close to what it is now and the payments that the town reshaped would level off between FY 26 and FY 30.

Councilmember del Aguila expressed concern over having to vote on this item the next week given that these numbers could drastically change. He understood why this item would be helpful to the town but was concerned about the cost in FY 25 and what that would look like.

Mr. Laux stated that in an order of magnitude, he expected the numbers to remain close to the projected amounts. He stated that he should have the bids by late tomorrow, July 8, 2020, and would get information to Council as soon as they could in advance of Tuesday's meeting.

In response to queries from Councilmember del Aguila about allowing public comments, the Town Manager stated that there was no legal requirement for a public hearing, but it could be advertised for comment. He recognized the Town Attorney for further comments.

The Town Attorney agreed with the Town Manager and stated that the most advisable course would be to solicit written comments through the town's website as staff had been doing for the Webex meetings.

Councilmember del Aguila stated that Council needed as much information as possible before they made a decision on July 14, 2020.

Mayor Merkel asked if it was possible to publicize that the Council was looking for comments on this item. She stated she could mention it at the start of next week's meeting as well, if that were possible.

The Town Manager stated that staff could get the word out through News You Can Use and through the town's social media channels. He would ask the Chief Communications Officer to help turn something around by that Thursday.

Mayor Merkel asked that the public be encouraged to submit written comments, to which the Town Manager agreed.

Councilmember Friedrichs asked if Council could have a copy of the PowerPoint being shown for this item.

Mayor Merkel stated she was not sure if staff had a copy of the PowerPoint ahead of time, but that it could be added to Granicus. She thought it would be updated for next week.

The Town Manager stated that he could provide that information.

9. **Resolution numbers 20-G-21 through 20-G-27, to ratify Temporary License Agreements between the Town of Herndon and Green Lizard Cycling (20-G-21); Jimmy's Old Town Tavern (20-G-22); Mile 20 at Mediterranean Breeze (20-G-23); Red Kimono LLC, (20-G-24); Russia House Restaurant (20-G-25); Sully's Pour House (20-G-26); and Zeffirelli Ristorante Italiano (20-G-27) for use of public property or public right-of-way for temporary outdoor dining.**

Mayor Merkel stated that the Town Attorney would provide concurrent staff reports on the following items, which would ratify Temporary License Agreements for use of public property or public right-of-way for temporary outdoor dining between the town and seven businesses for temporary outdoor dining, which were as follows:

- **Resolution 20-G-21, Green Lizard Cycling;**
- **Resolution 20-G-22, Jimmy's Old Town Tavern;**
- **Resolution 20-G-23, Mile 20 at Mediterranean Breeze;**
- **Resolution 20-G-24, Red Kimono, LLC;**
- **Resolution 20-G-25, Russia House Restaurant;**
- **Resolution 20-G-26, Sully's Pour House; and**
- **Resolution 20-G-27, Zeffirelli Ristorante Italiano.**

The Town Attorney presented the comprehensive staff report dated July 7, 2020, which is on file in the Town Clerk's office. She stated that on May 29, 2020, Northern Virginia entered Phase One of the Governor's "Forward Virginia Plan," where restaurants could operate outdoors at a reduced capacity. They could be given an ABC license if their operation was within 100 feet of their business. To assist town businesses in re-opening, staff developed an application for a free Temporary Outdoor Dining Permit. The application provided for three types of outdoor dining scenarios, which were: private property, town sidewalks (right-of-way), and town parking lots. The town received and approved at least five applications for outdoor dining on private property, along with 16 restaurants in the Dwoskin portion of the Herndon Centre. Establishments that requested to use town sidewalks and/or parking lots were also required to complete an application for a Temporary License Agreement, which included a condition allowing the town to block off certain parking lots and portions of sidewalks with Jersey barriers.

To expedite the process established in Phase One, the Council amended its Continuity of Government Ordinance and authorized the Town Manager to approve and sign instruments necessary to address the phased reopening of the town. Such instruments were subject to final consideration and ratification by the Council at the next available public hearing. The Town Attorney stated that the Council must now consider ratification of the seven Temporary License Agreements for Temporary Outdoor Dining on town property to finalize approval. These agreements would extend until early September, following Labor

Day, without any further action of Council, following ratification. Staff recommends approval of the proposed resolutions, as presented.

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

In response to queries from Councilmember Friedrichs, the Town Attorney clarified that Council could not ratify these agreements until the public hearing on the following Tuesday.

Councilmember del Aguila stated he thought the town should think about making this a permanent, seasonal condition between certain dates of the calendar year.

Mayor Merkel agreed with her colleague's point and stated she had planned to suggest extending these agreements through October 2020.

Councilmember del Aguila expressed appreciation for that and asked what it would take because he thought it was worth exploring.

The Town Attorney responded to these queries by stating that, regarding the use of public property, the outdoor dining permits were predicated on their ABC licenses allowing that to occur. She stated that the town already has an outdoor dining process set up and staff should be amenable.

The Town Manager added that several of these spaces were in public shared parking spaces. He stated that the relevant zoning language and parking agreements with businesses downtown would need to be looked at and reworked. He agreed that much of it would depend on if the ABC continued with its loosening of restrictions during COVID. He echoed others' comments about the positive reception of outdoor dining available in the town and that the restaurants were interested in it. He reiterated that it would take a lot of cleanup, but it was something that staff could pursue.

Mayor Merkel added that both she and the Town Manager could bring this up on their calls with other localities and local organizations.

Vice Mayor Olem provided brief comments supporting how quickly the town was able to enact this outdoor dining process.

Councilmember Dhakal echoed Councilmember del Aguila and Mayor Merkel's comments about both extending the outdoor dining this year and looking at having a similar process every year, perhaps from Memorial Day to Labor Day.

There was a brief question and answer between Councilmember Friedrichs and the Town Manager about Manassas allowing alcoholic beverages outside in some areas. She suggested looking at something like that for the town.

Mayor Merkel stated that it appeared the Council would have several related future discussion items on this topic.

Following discussion and with the concurrence of Council, Mayor Merkel asked to place these items on the Consent agenda for next week's meeting.

DISCUSSION

10. CARES Act Funding.

Mayor Merkel recognized the Director of Finance to begin the discussion on the CARES Act with a PowerPoint dated July 7, 2020, which is on file in the Town Clerk's office.

The Director of Finance stated that the guidance for CARES Act funding changes often and the last change had happened in the past week. She stated that the town was fortunate to be part of Fairfax County, which had been the only locality in the state large enough to receive funds directly from the US Treasury. She stated that the town received approximately $4.28 million in funding, and she stated that these funds could only be used for expenditures directly incurred and necessary for COVID-19 between March 1, 2020 and December 30, 2020. These expenses would not have been accounted for in the budget most recently approved as of March 27, 2020. She stated that these funds would have to be paid back if they were not used correctly and reviewed some of the challenges the town faced in using the funding.

The Director of Finance also stated that the finance department had been working with the county finance department, along with the finance directors from the three incorporated towns. She stated that items such as personal protective equipment (PPE) were included. She stated that staff was coordinating with HPD to ensure there was no overlap with money being used for FEMA and CARES.

[Note: At 8:56 p.m. the Webex audio cut out and started working again at 9:02 p.m. The discussion in between these two times was not captured.]

Councilmember Friedrichs provided comments about outreach to at-risk communities.

Councilmember del Aguila asked for further information about the challenges presented by using the funding.

In response to queries from Councilmember del Aguila, the Director of Finance stated that there was risk if the town spent the funds on something that was

deemed not directly associated with mitigating the pandemic or that led to the town recovering revenue, because then the town would have to pay it back.

Councilmember del Aguila encouraged staff to only spend money on things that would be guaranteed to fall under the funding categories.

Mayor Merkel stated that she understood Councilmember del Aguila's concerns. She stated that the town had incurred costs because of the pandemic and staff was looking at how to use CARES Act funding to cover some of those costs.

The Director of Finance stated that during the State of Emergency, it appeared the town's spending was low. She stated that further guidance had been issued on how to use CARES Act funding, staff always kept in mind that there would be audits after using the money, and hey continued to seek guidance from the county.

There was further brief discussion on this item.

[Note: During the period of 9:04 to 9:08 p.m., the Webex audio briefly cut in and out during the discussion.]

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.

1. **Councilmember Friedrichs:**

Meeting Format Discussion

Councilmember Friedrichs provided comments on wanting to move Council back to having in-person meetings, since the state was in Phase Three. She stated she understood that Herndon's numbers were not as low as some other parts of the county, but she thought it was important to resume meetings in-person as soon as possible. She stated that since Phase Three allowed for gatherings of up to 250 people, Council meetings in Herndon were fairly sedate, and she stated that the joint meeting Council had with the Planning Commission earlier in the year showed her that it's possible to set out a lot of tables for spacing, and she stated that staff who were concerned could possibly join the meeting electronically. She stated that meeting virtually is clunky and only one member of the public had spoken during the virtual meetings. She stated that, given the situation at that time, she thought there should be in-person meetings, and if the situation declines, then they could move back to electronic.

Councilmember Baker stated that she thought Councilmember Friedrichs' comments were fair and other jurisdictions had done that, but she suggested possibly keeping work sessions virtual, since there was not an easy way to hold those meetings and be socially distant. She suggested moving back the in-person public hearings.

Mayor Merkel agreed with Councilmember Baker about being uncomfortable with having in-person work sessions. She stated that having a public hearing in the Council Chambers would be a situation that needed to be resolved since court is held there the following day. She thought that the enhanced cleaning process could be an issue.

Councilmember del Aguila stated that he understood wanting to move back to in-person meetings, but he stated he is in contact with his 85-year-old parents and would like to stay virtually until there was more testing. He stated that he would probably need to op-out. He stated he was open to seeing what that layout would look like.

Mayor Merkel then confirmed with the Town Attorney that the ordinance for electronic meetings were currently scheduled to stay virtual through September.

The Town Attorney confirmed and stated that it could always be amended but, at that time, with no action the expiration was on September 26, 2020.

Mayor Merkel stated that Council could look at this again at the end of August because school would be starting in some format around that time. She stated there were just so many unknowns to make a decision at that time.

Councilmember McKenna then added that many full-time employers may have restrictions like his does with travel and contact tracing. He stated his company was in Fort Lauderdale and was not going back to work anytime soon, so meeting in-person may also depend on what employers would allow.

Vice Mayor Olem then stated that she would want to have masks and gloves to meet and spoke about the difficulty of speaking with a mask on and the difference in meeting inside and outside.

Councilmember Friedrichs stated that she understood her colleagues' concerns and would bring the issue up again later.

Mayor Merkel stated that she thought this would come up on regional calls and she would be interested to hear what colleagues were doing in other jurisdictions. She stated that if she learned anything interesting, she would share with Council.

2. **Councilmember del Aguila:**

Press Conference Process Discussion

Councilmember del Aguila stated that it had been a week that he was thinking about this, and he wanted to bring up the process, not content, of the press conference the Chief of Police held the prior week. He stated that he wanted to focus on the process and not get into the details. He asked, "what is the process for either leads, or department heads, or whatever you want to call them, to actually hold press conferences." He was a little bit confused because he would have expected Council to be notified much sooner than they were. He wanted to keep the conversation to process and asked if someone could enlighten him on what that process is. For example, he asked, if DPW needed to hold a press conference, how that process would work.

Mayor Merkel stated that the whole town has a Chief Communications Officer, and that the Herndon Police Department (HPD) has their own Public Information Officer (PIO) because they get a lot of inquiries. She stated that the Chief of Police did not work for her and recognized the Town Manager for comments.

The Town Manager stated that the process for a press conference has rarely happened and in his time, he had only seen two of them, both of which were out of HPD. He stated that both pertained to law enforcement issues, both pertained to personnel, and had serious allegations attached to them. He stated that, in this case, issues were breaking and HPD was fielding media inquiries going into HPD. He stated the Chief of Police was receiving those inquiries in her office and felt it was best to share that information the town had immediately. He then stated the allegation was a serious one. He stated that the time before when it had happened there was a serious issue with a former employee who had been disciplined and was arrested. He also stated that Tuesday's press conference was a compressed time period.

Councilmember del Aguila then asked someone to enlighten him or storyboard/flowchart what the process was because he was hearing that it was "probably best to share" and he stated he got that, and he stated he wanted to understand the process because "assume there's going to be need for another press conference, what is that process, and what should be versus what could be communicated, and how does that get resolved."

The Town Attorney stated that she could answer with regard to law enforcement. The Chief of Police, as the chief law enforcement officer pursuant to state and town law, has the obligation and access to the information to respond. With regard to law enforcement issues, which the two the Town Manager had

mentioned were law enforcement issues, she stated the decision would be made by the Chief of Police and communicated to the Council either by the Town Manager, Mayor, or Town Attorney.

Councilmember del Aguila then asked if she could share that document and he asked if it was just a best practice or where that was stated. He stated he understood that these entities were kept apart in most cases, but he asked about if a majority of Council believes a specific message should be communicated. He asked if they gave "autonomy to the head of that department to communicate whatever message they were comfortable sharing." He then asked if there was not a reporting structure through the Town Manager or the Town Attorney through the Town Council. He asked who was running the town in that sense, as far as message.

The Town Attorney responded and stated that all other departments besides the police department report to the Town Manager. She stated that law enforcement matters were dictated by state law.

Councilmember del Aguila stated he was talking about the process of the press conference. He asked who determined the message, sentiment, opinion, or position that was shared.

Mayor Merkel stated that the Chief of Police had the authority, and she was not sharing opinions. She stated that she was sharing additional information that the police department had.

Councilmember del Aguila stated a counterpoint was that people questioned, if the video was not shared and the video was not seen, how someone could communicate what they communicated in absolute terms. He thought that Council should have been either notified or somehow involved. He stated that the majority of Council might not have agreed. He stated if the purpose was to keep entities apart and that was state mandated, that was okay. He stated he still did not understand having one entity with the authority to communicate what they want and then the Council, who was supposed to be in charge of the entire Herndon body.

Mayor Merkel then stated that this was a police issue and not a political issue and all of the inquiries were going to HPD, not Council or the Town Manager's office.

Councilmember del Aguila then questioned if there was no Council involvement in the process of what gets communicated out of HPD.

The Town Attorney began a statement, "regarding law enforcement..."

Councilmember del Aguila then stated this was a press conference of a matter that had a nonprofit and two parents. He stated that he thinks the Council should be involved in that process and he was not hearing where it was an absolute. He was hearing where it was a general authority somewhere.

Mayor Merkel stated that she stood by her earlier statement that this was not a political issue but a police issue that was handled as other police issues had been handled.

Councilmember del Aguila questioned if it made sense that Council had no say in what was communicated out.

Mayor Merkel stated that, on police issues, she did not believe that the Council did.

The Town Attorney stated that on law enforcement issues, there was no way that Council or anyone other than law enforcement could have access to or knowledge of all of the different factors involved in a particular issue.

Councilmember del Aguila began providing comments and Mayor Merkel asked him to let the Town Attorney finish her comments.

The Town Attorney continued and stated there might be different opinions regarding something. As far as process, she did not know of any other board or council in the state where that would be required of law enforcement. She stated in this particular circumstance that the press conference had followed the course others had making sure all information was out there in a short period of time and nothing unusual was done.

Councilmember del Aguila then stated that, again, in a contrarian view, had Council been told that not all the evidence was viewed or was not available, he would have recommended changing the wording a little bit. He stated that, if Council was involved in that consultative process, he thought there would have been a different outcome. He stated that he thought there would then be more accusations and more press conferences. He stated it would be beneficial to everyone if Council was involved, not to approve anything, he was not suggesting they write statements, but he thought it made sense for Council to be consulted in a matter like this, especially like the matter he was referring to, "especially today, especially when you have such a hotbed of potential responses." He stated that he thought it would have been better to have Council involved in the process. He stated he thought it did not take away anything and would have added to what was being said or communicated and he was done talking about it he just wanted to make that point.

3. **Councilmember Dhakal:** Councilmember Dhakal stated that a lot of people were asking one question on social media and he had asked the Town Attorney and gotten an answer. He stated people were talking about the video that Fairfax County Public Schools (FCPS) has and asked what the process was for getting the video and if anyone has a chance of getting a different perspective. He stated from a compliance perspective he did understand and asked if there was any work around of getting that video.

   Mayor Merkel stated that she thought that question had been asked but deferred to the Town Attorney.

   The Town Attorney stated that the best entity to answer that question was the author and the owner of that document which was Fairfax County. She stated that if the public has that question regarding Fairfax County School records, she would urge them to ask FCPS.

4. **Councilmember Friedrichs:** Councilmember Friedrichs wanted to add to Councilmember del Aguila's comments and stated that she understood the concerns and what the Chief of Police needed to share in that particular situation, but the general public seems to believe, for better or worse, that all the information that comes out of the town is something Council has said they know. She said when someone calls her and asks why they did something or chose to do something it was because they believe that they, as Council, advise and give consent to the actions of staff. She stated that staff reports to the Town Manager and the Town Manager reports to Council, but she stated the point was if they knew in advance, they would have the opportunity, at least most of them, to be able to answer in an appropriate way. She stated if it just shows up five minutes before a press conference then Council is out there saying "that's not me, that's other people." She stated that she thought this sounded pretty shiftless, and that she knows the Chief of Police needed to share what she shared. She stated that her concern was the population that elected them thinks they are in some way responsible for what was going on in the town. She stated that she would like to be able to answer them and she wanted to have more communication.

   Mayor Merkel stated there was a very short turnaround, that the town had no idea that the original press conference was coming, and they had heard nothing from anyone regarding this case since October. Mayor Merkel stated that she did not know about the case until a couple of weeks before. She stated it was very reactionary to what was said in the press conference. She stated that three hours might sound like a long time, but it really was not. She said they could have probably communicated a little quicker, but it was not an intentional act. She stated it was a crazy day in the town and thankfully there were not many of those.

   Councilmember del Aguila stated he did not think a day would have hurt. He stated that he did not think anything would have been lost but something would

have been gained because they all bring different perspectives and worldviews to this. He stated that as a minority with a lot of minority friends, "you have to understand that statistically, we're more inclined to have experienced an injustice either personally, or through a family member, or through a neighbor so when you have someone who either doesn't acknowledge it or is very passionate one way it sort of further deepens that hurt." He stated that by waiting a day, Council would have been able to advise and give some potential language, wording, or feedback. He stated "you can have your views, but there's nothing wrong with hearing the contrarian views, and I will remind everyone that this town is a majority minority immigrant, so we need to keep remembering that and you look at the leadership, you look at the council, boards, chairs, and commissions, that diversity isn't represented there. So, there's this tension out there guys, if you don't know about it, I am here to tell you it's there, and I hear about it all the time." He emphasized that waiting a day would have helped and he thinks the process needs to be addressed.

5. **Vice Mayor Olem:** Vice Mayor Olem stated that she first learned about this on June 18, 2020, and immediately took it to the Town Manager. She stated that on June 25, 2020, she was able to have a meeting, which everyone was offered, with the Chief of Police and the Town Manager. She was amazed at what the Chief of Police said had happened in September and October, and she stated on June 30, 2020, there was the press release and she had spoken with a member of the school board "just before it hit." She stated she would not have been wanting to tell the Chief of Police how to do that. She stated that she thinks the Chief of Police knows her staff. She stated that since she had no child on the bus, she would not even ask to see that video. She stated when she goes back and looks at all of what was available, considering the allegations made toward the officer, which could be criminal, she could see why things ended up the way they did. Vice Mayor Olem stated she had not received negative feedback and she had talked to people of a lot of ethnicities about this matter.

Mayor Merkel's video froze, so Vice Mayor Olem told Councilmember Baker to go ahead with her Roundtable comments.

6. **Councilmember Baker:** Councilmember Baker stated that she recognized the sensitivity with police at that time, and she wanted to voice her opinion. She stated that HPD has a full-time PIO. She also stated that timing was important and trying to get seven members of Council in the loop and informed was unnecessary to the mission of the police to communicate with the public. She stated, as elected officials, that was not their role and she thought that Council being informed when they were was acceptable.

The Town Attorney stated that Mayor Merkel's video was frozen and asked Vice Mayor Olem to ask if there were any further questions, before Mayor Merkel was able to rejoin the meeting with audio only.

7. **Mayor Merkel:** Mayor Merkel stated this was a very difficult situation with a lot of different moving parts and that she stands behind the Chief of Police and how she handled the situation.

Mayor Merkel asked if there were any further comments, and there were no additional comments from Council.

ADJOURNMENT

On motion of Vice Mayor Olem, seconded by Councilmember Dhakal, and carried by unanimous roll call vote by electronic means, the meeting of the July 7, 2020 work session was adjourned at 9:44 p.m. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Lisa C. Merkel
Mayor

TOWN OF HERNDON, VIRGINIA 1879

Jessica Sizemore
Legislative Assistant

Minutes approved by Town Council: August 11, 2020.