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**HERNDON TOWN COUNCIL
Work Session
Tuesday, August 4, 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 August 4, 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 30, 2020. In attendance electronically were:

- Mayor Lisa C. Merkel, presiding;
- Vice Mayor Sheila A. Olem (joined the closed meeting work session Webex at 6:18 p.m. and the work session Webex at 7:08 p.m., due to technical issues);
- Councilmember Jennifer K. Baker;
- Councilmember Cesar del Aguila;
- Councilmember Pradip Dhakal;
- Councilmember Signe Friedrichs (joined the closed meeting work session Webex at 6:18 p.m., due to technical issues); and
- Councilmember Bill McKenna.

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1. **CLOSED MEETING**

Roll Call & Determination of Quorum

Mayor Merkel called the August 4, 2020 work session to order. All members were present, electronically, with Mayor Merkel presiding.

Mayor Merkel stated that the Council had a need to go into a closed meeting that evening and that the Town Clerk had posted and filed the appropriate notices, including those for the meeting to be held electronically.

On motion of Councilmember Baker, seconded by Councilmember McKenna, and carried by a 5-0 roll call vote by electronic means, the Herndon Town Council went into Closed Meeting at 5:43 p.m., under Section 2.2-3711(A)(1) of the Code of Virginia, pertaining to discussion of specific public employee relative to annual performance review.

Vote: Councilmembers Baker, del Aguila, Dhakal, McKenna, and Mayor Merkel voting "Aye." Councilmember Friedrichs and Vice Mayor Olem having not yet arrived, due to technical issues.

[Note: While the Council was in closed session, Councilmember Friedrichs and Vice Mayor Olem joined the closed meeting Webex at 6:18 p.m.]

On motion of Councilmember Baker, seconded by Councilmember del Aguila, and carried by unanimous roll call vote by electronic means, the Herndon Town Council reconvened in public session at 6:53 p.m.

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

On motion of Councilmember McKenna, seconded by Councilmember Friedrichs, and carried by unanimous roll call vote by electronic means, the Herndon Town Council approved the following Certification of Closed Meeting.

Vote: Councilmembers Baker, del Aguila, Dhakal, 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

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

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

VOTE:

Ayes – 7

Nays – 0

ABSENT DURING VOTE: 0

ABSENT DURING MEETING: 0

RECESS

At 6:54 p.m., Mayor Merkel called a brief recess; and at 7:00 p.m., the meeting reconvened electronically on Webex, all members present, with the exception of Vice Mayor Olem, who had not yet arrived due to technical difficulties, and with Mayor Merkel presiding.

WORK SESSION

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; John Irish, Deputy Director of Public Works; Lauri Sigler, Deputy Town Attorney; and Margie C. Tacci, Deputy Town Clerk.

ANNOUNCEMENTS

The Deputy Town Clerk welcomed those listening to the August 4, 2020 work session and 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:

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- ❖ 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.

Mayor Merkel stated earlier that evening, the Council had met in a closed meeting and no action was taken following the closed meeting.

CALL TO ORDER

2. Roll Call & Confirmation of Quorum

Mayor Merkel asked the Deputy Town Clerk to call the roll for attendance, to confirm a quorum, and for each Councilmember to respond by clearly stating their name and indicating they were present. All members were present electronically, except for Vice Mayor Olem, who had not yet arrived due to technical issues, and with Mayor Merkel presiding.

Mayor Merkel stated, for the record, that there was a quorum present electronically that evening. She indicated that Vice Mayor Olem was having technical difficulties and staff was working with her to sign on to the meeting. She stated that William H. Ashton II, Town Manager and Lesa Yeatts, Town Attorney, were also present. As the Deputy Town Clerk had stated, 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.

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3. 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 an update on the COVID-19 pandemic by sharing numbers released by the Northern Virginia Health Directors regarding the downward decline in percent positivity trends in the Northern Virginia region.

The Town Manager stated that while the rest of Virginia was in various states of substantial community transmission and increasing trends, the Northern Virginia region was operating well with a low burden, steady trend downward, and low community transmission. He stated that COVID-19 pandemic numbers seemed to be under a semblance of control in the region, and the case incidence rate was on a downward trend over the past 16 days. He also stated that the test percent positivity rate was down to 5.8 percent, which was the lowest it had been with a 28-day decline. He stated that was excellent, especially with the increase in testing. He stated that 2.5 percent of positive cases were healthcare workers, and that was the lowest that number has been with a nine-day decline.

The Town Manager also stated that emergency room visits were down at 3.2 visits per 100,000, which was a 16-day decline, along with ICU hospitalizations at 1.2 per every 100,000 cases. He stated that the Northern Virginia region was doing very well with a 61-day decline, but he emphasized that this was still an active virus. He stated that, at that time, the town had several employees on leave for COVID-19, but the town was adapting. He also stated that the town was taking steps to ensure the safety of its employees, and those that were impacted would be out for 14 days to ensure there would be no community spread in the workspace.

[Note: at 7:08 p.m., Vice Mayor Olem joined the work session meeting on Webex, due to technical issues.]

Questions of Council

In response to queries from Councilmember Dhakal, the Town Manager confirmed that 2.5 percent of positive cases were of healthcare workers and that this number was on a nine-day decline. Councilmember Dhakal stated this was positive news and affirmed that proper precautions could significantly reduce infection.

The Town Manager stated that, early on, there was some difficulty in health care workers obtaining personal protective equipment (PPE), and now there was a better stock of PPE, along with a better understanding of the virus.

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In response to queries from Councilmember Friedrichs, the Town Manager stated that he would prefer not to point out the specific departments that were affected by COVID-19 due to Health Insurance Portability and Accountability Act (HIPAA) and the small size of the organization. He stated that the town had done contact tracing and the organization was still meeting all of its missions.

COMMENTS & DISCLOSURES FOR THE RECORD

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

Mayor Merkel asked the Deputy Town Clerk whether she had received any Transactional Disclosure Declarations from Council for any items listed on the agenda, and the Deputy Town Clerk stated that she had not received any disclosures from Council.

PUBLIC HEARINGS

Mayor Merkel stated that there were several public hearings on the agenda, which were divided into three groups of concurrent staff reports:

- Herndon Parkway/Van Buren Street Intersection;
- Quitclaim Deeds to Dominion; and
- Conveyance of an easement to VDOT for the East Spring Street Widening project.

Mayor Merkel stated that next week staff would provide three collective presentations and following each one, she would call on comments from the audience on the item, followed by individual action and roll call votes.

HERNDON PARKWAY/VAN BUREN STREET INTERSECTION

4. **Ordinance 20-O-42, to authorize the use of eminent domain for the acquisition of a temporary construction easement on property established by Declaration for Metro Square Condominium recorded in Deed Book 25504, at page 692, as amended, among the land records of Fairfax County, Virginia and owned by Unit Owners Association of the Metro Square Condominium, at the southeast corner of the intersection of Herndon Parkway and Van Buren Street Elden Street, Herndon, Virginia, previously Tax Map #: 0164-10-0007N-1, for public use by condemnation for**

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transportation facility improvements at the Herndon Parkway and Van Buren Street intersection, Herndon, Virginia;

5. **Ordinance 20-O-43, to authorize the use of eminent domain for the acquisition of a fee simple interest, permanent storm drainage easement and a temporary easement on property owned by PS Business Parks, L.P., successor-in-interest to Monroe Parkway, L.L.C, at 570 Herndon Parkway, Herndon, Virginia, Tax Map #: 0164-10-0001A5, for public use by condemnation for transportation facility improvements at the Herndon Parkway and Van Buren Street intersection, Herndon, Virginia; and**
6. **Ordinance 20-O-44, to authorize the use of eminent domain for the acquisition of a fee simple interest, permanent storm drainage easement and a temporary easement on property owned by Galaxy Atrium, LLC, at 205 Van Buren Street, Herndon, Virginia, Tax Map #: 0164-02-0004A, for public use by condemnation for transportation facility improvements at the Herndon Parkway and Van Buren Street intersection, Herndon, Virginia.**

Mayor Merkel stated that the first three public hearings would authorize the use of eminent domain for the acquisition of fee simple interests and temporary easements for public pedestrian, utility, and streetscape improvements at the Herndon Parkway/Van Buren Street Intersection, on three parcels of property owned by:

- ❖ Unit Owners Association of the Metro Square Condominium, southeast corner of the Herndon Parkway and Van Buren Street intersection;
- ❖ PS Business Parks, L.P., successor-in-interest to Monroe Parkway, LLC, 570 Herndon Parkway; and
- ❖ Galaxy Atrium, LLC, 205 Van Buren Street.

Mayor Merkel recognized the Deputy Director of Public Works, for a concurrent staff report on the items, followed by input from Deputy Town Attorney on the condemnation process.

The Deputy Director of Public Works presented the staff report and PowerPoint dated August 4, 2020, which are on file in the Town Clerk's office. He reviewed the location, background, scope, and action taken with these properties which were part of the Herndon Parkway/Van Buren Street Intersection project. The public improvements would include widening the intersection, traffic and

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pedestrian signals, an extended sidewalk and cycle track, and a redesigned stormwater management system. The Deputy Director of Public Works asked the Deputy Town Attorney to continue the presentation.

The Deputy Town Attorney finished presenting the staff report and PowerPoint. She stated that to construct the improvements, the acquisition of several interests in land were identified as necessary from the properties at the intersection. There were several elements in the state code that were required to exercise eminent domain, including holding a public hearing, no more property would be taken than was necessary for the project ~ which had to be for a public use, and that the town had made bona fide, but ineffectual, efforts to purchase the property. As a result, negotiations were at an impasse and the landowners could not convey valid titles. The town sought to file Certificates of Take and prosecute to completion the actions for the town's condemnation of these necessary interests in land over the real estate so that construction of this critical project could begin. She stated that staff had been in contact with two of the property owners and that the town had to give the property owners 30 days' notice before filing the Certificates, which had occurred on July 28, 2020. There was a 15-day window after that in which the town could file the Certificates. Staff recommends approval of the proposed ordinances, as presented.

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

In response to queries from Councilmember Friedrichs, the Deputy Town Attorney discussed the town's urgency in completing this project. She stated that it was located in between the Herndon Metrorail Bus Bays and Van Buren Complete Streets projects, which were undergoing utility relocations. The town needed to proceed to construction on this project and keep moving ahead.

The Deputy Director of Public Works stated that the deadline for this project's grant funding was in December that year and he concurred with the Deputy Town Attorney's comments on utility relocation. He stated that this deadline was approaching, and staff wanted to make sure they advertised the project for bid on time.

In response to queries from Vice Mayor Olem, the Deputy Director of Public Works stated that one of the objectives for the project was to improve stormwater management at the intersection.

Vice Mayor Olem provided brief comments about when Metrorail was hoping to hand off Phase II of the Dulles Metrorail for testing, which she had heard from NPR would likely be late December or early January. She stated that the timing was urgent to keep the project moving.

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QUITCLAIM DEEDS TO DOMINION

7. Ordinance 20-O-45, to approve the conveyance of a power utility easement by Quitclaim Deed to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, acquired by the Town of Herndon for transportation facility improvements for the Van Buren Street Improvement Project, on property owned by James R. Lee at 403 Hillwood Court, Herndon, Virginia, Fairfax County Tax Map #: 0162-22-0006;
8. Ordinance 20-O-46, to approve the conveyance of a power utility easement by Quitclaim Deed to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, acquired by the Town of Herndon for transportation facility improvements for the Van Buren Street Improvement Project on property owned by Nichole F. Lopes & Patrick T. Lopes at 433 Van Buren Street, Herndon, Virginia, Fairfax County Tax Map #:0162-06-0002;
9. Ordinance 20-O-47, to approve the conveyance of a power utility easement by Quitclaim Deed to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, acquired by the Town of Herndon for transportation facility improvements for the Van Buren Street Improvement Project on property owned by Valerie J. Winstead, Trustee at 405 Van Buren Street, Herndon, Virginia, Fairfax County Tax Map #: 0162-02-0146; and
10. Ordinance 20-O-48, to approve the conveyance of a power utility easement by Quitclaim Deed to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, acquired by the Town of Herndon for transportation facility improvements for the Herndon Metrorail Access Improvements on property owned by Parkview Executive Center, Joint Venture RLLP, at 593 Herndon Parkway, Herndon, Virginia, Fairfax County Tax Map #: 0164-10-0007C.

Mayor Merkel stated that the next four public hearings related to the conveyance of power utility easements by Quitclaim Deed to Virginia Electric and Power Company, doing business in Virginia as Dominion Energy Virginia. The easements were for transportation improvements for the Van Buren Street Improvement Project on property owned by:

❖ James R. Lee, 403 Hillwood Court;

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- ❖ Nichole F. & Patrick T. Lopes, 433 Van Buren Street; and
- ❖ Valerie J. Winstead, Trustee, 405 Van Buren Street.

Along with transportation facility improvements for the Herndon Metrorail Access Improvements on property owned by the Parkview Executive Center, Joint Venture RLLP, 593 Herndon Parkway.

Mayor Merkel recognized the Deputy Town Attorney for a concurrent staff report on the items.

The Deputy Town Attorney presented the staff report and PowerPoint, dated August 4, 2020, which are on file in the Town Clerk's office. She stated that the town had required easements either for the Herndon Metrorail Bus Bays project or the Van Buren Complete Streets project, which the town acquired through Certificates of Take. She stated that certain power utility easements were acquired from property owners to allow for the relocation of and placement of new electrical facilities by Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia ("Dominion"). The town must now convey by quitclaim, all of its interest in the permanent non-exclusive power utility easement to Dominion, to allow for the relocation and placement of new electrical facilities for the project to proceed. Pursuant to the state code, the Council must hold public hearings prior to conveying these interests in property owned by the town. The Deputy Town Attorney reviewed the location, background, and scope of the project, which were provided in the PowerPoint. If approved, Mayor Merkel would sign the deeds to convey the interests to Dominion. Staff recommends approval of the proposed ordinances, as presented.

The Deputy Town Attorney stated that there was an error on the diagram for the Lopes property in staff's PowerPoint, which she would correct for next week's meeting.

There was brief discussion amongst Council and staff on these items.

There was a brief question and answer session between Councilmember Dhakal and the Deputy Town Attorney about the utility easement process. The Deputy Town Attorney discussed why the town followed the process of acquiring the easements from the property owners and then conveying it to Dominion. She stated that the town was the entity that compensated the property owner for the easement.

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11. **Ordinance 20-O-49, to approve the conveyance of a temporary construction easement to the Commonwealth of Virginia acting by and through the Virginia Department of Transportation (VDOT) on Town-owned property at 397 Herndon Parkway, Herndon, Virginia, Fairfax County Tax Map #: 0171-06-E2 for transportation facility improvements associated with the Spring Street Widening project.**

Mayor Merkel stated that the last public hearing is for the conveyance of an easement on town-owned property at 397 Herndon Parkway for transportation facility improvements associated with the East Spring Street Widening project. She recognized the Deputy Town Attorney for the staff report.

The Deputy Town Attorney presented the staff report and PowerPoint, which are on file in the Town Clerk's office. VDOT had asked the town for a temporary easement on town property at 397 Herndon Parkway. The proposed ordinance would authorize Mayor Merkel to sign instruments conveying the necessary town property and property rights to the Commonwealth of Virginia, acting by and through VDOT, for the East Spring Street Widening project, that would widen about a half-mile of Spring Street from to accommodate increased current and future traffic demands. The project improvements would also include additional turn lanes, sidewalk and bike lane improvements.

The Virginia Department of Transportation (VDOT) asked that the needed easement be donated to the state for highway improvement use, which would be accomplished through the proposed ordinance and agreement. To complete the Project, VDOT could enter the property for construction, maintenance and/or operation of the public transportation facility, and the relocation, installation, improvement, or maintenance of a utility service provided by a public utility provider.

VDOT and staff reviewed the project and related need for the conveyance of the temporary construction easement and the easement plats. The Deputy Town Attorney stated that the easement would automatically terminate when the construction was complete and would cause minimal intrusion into the property. Staff recommends approval of the proposed ordinance, as presented.

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

In response to queries from Councilmember Friedrichs, the Deputy Town Attorney confirmed that the draft staff was working on with VDOT would include language about returning the landscaping to its former state. Prior to next week's meeting, she expected to have the final document.

In response to queries from Councilmember Friedrichs about whether the town asked VDOT for anything in return for using the town's property, the Deputy

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Town Attorney stated that there were some projects where easements were donated over the past year, but to go back further, she would need additional time to research it.

The Town Manager stated that the East Spring Street was a town project and there would be nothing to be gained in VDOT giving the town money for land acquisition that the town would likely have to pay back, either through grants or from the General Fund.

In response to queries from Councilmember del Aguila, with which Mayor Merkel agreed, the Town Manager and the Deputy Town Attorney agreed to make that information part of the presentation for the next week's meeting.

GENERAL

12. Resolution, to ratify the Federal Subaward Agreement between the Town and Fairfax County for the use of Coronavirus Aid, Relief and Economic Security (CARES) funds.

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report, which is on file in the Town Clerk's office. On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Securities (CARES) Act to provide support directly to state and local governments to address the COVID-19 pandemic. Governments with populations greater than 500,000 could apply for direct federal payment of CARES Act funds. Fairfax County was the only jurisdiction in the Commonwealth of Virginia to receive direct funding from the US Treasury. The county passed a proportionate amount of \$4.279 million to the town, based on its 2019 US Census population. The Town Attorney stated that the county transferred funds to the town on April 29, 2020.

The Town Attorney stated that to comply with federal grant funding requirements and to be consistent with federal government expectations of all jurisdictions receiving CARES funds, the town must execute a Federal Subaward Agreement with the county. This agreement specified the amount awarded, and laid out terms of the funding, specific uses of funds, reporting requirements, and other procedures and policies required for federal grant awards. The Town Attorney stated that if the Town does not sign the subaward agreement, the entire \$4.279 million would have to be returned to the county. Staff recommends approval of the proposed resolution, as presented.

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

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Mayor Merkel provided comments about the town's positive relationship with Fairfax County and Chairman Jeff McKay.

13. **Ordinance 20-O-50, to approve and authorize the Mayor to sign a Lease Agreement between the Town and Susan Alger for property located at 195 Herndon Parkway.**

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report, which is on file in the Town Clerk's office. The town owns a 1940's, 2,800 square foot, two-story brick residence located at 195 Herndon Parkway in Runnymede Park. In September 2002 the town approved a three-year lease with Susan Alger, a former employee of the Virginia Department of Game and Inland Fisheries. Since then, Ms. Alger and her son, Kyle, served as informal overseers and provided a lower level of protection to the Park. The original lease with Ms. Alger was renewed in September 2005, September 2010, and September 2015, each for a five-year term. The tenant pays all utilities except water, sewer, and recycling services. The Town Attorney stated that the proposed lease renewal would be for another five-year term beginning October 1, 2020 and ending September 30, 2025. The proposed monthly rents, which contain an annual rent escalator, were outlined in the staff report. Staff recommends approval of the proposed ordinance, as presented.

Vice Mayor Olem provided positive comments on the resident and the services she provides.

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

14. **Ordinance 20-O-51, to approve and authorize the Mayor to sign a Lease Agreement between the Town and Michael S. Mueller for property located at 1270 Old Heights Road.**

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report, which is on file in the Town Clerk's office. In 1985, the town constructed a two-story house at 1270 Old Heights Road on the grounds of the Herndon Centennial Golf Course. The current Golf Course superintendent assumed his duties in August 2002 and his employment agreement requires him to maintain his residence at the 1270 Old Heights Road house. Given that the Golf Course superintendent resides at the house for the convenience of the town (which includes functioning as an overseer of the course during non-operational hours and assuming "on-call" duties for the course), a negotiated monthly rent was approved by Town Council. As part of the lease, the superintendent pays all residential utilities, including water, sewer, and recycling

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services. In August 2002 a new three-year lease agreement was approved by Council, followed by two five-year renewals in September 2005 and in September 2015. The proposed lease renewal would be for another five-year term beginning October 1, 2020 and ending September 30, 2025. The proposed monthly rents, which contain an annual rent escalator, were outlined in the staff report. Staff recommends approval of the proposed ordinance, as presented.

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

In response to queries from Councilmember Friedrichs, the Town Manager confirmed that the resident was the caretaker of the golf course and that the house was part of his compensation.

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

15. Resolution 20-G-29, to reappoint George Burke and Sean Regan to the Herndon Planning Commission.

Mayor Merkel stated that the resolution would appoint George Burke for a four-year term ending July 31, 2024; and Sean Regan for a four-year term ending August 31, 2024, as "town resident" members to the Herndon Planning Commission.

In response to queries from Councilmember del Aguila, Mayor Merkel confirmed that there were no other candidates for these specific positions.

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

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. Mayor Merkel

Continuity of Governmental Operations Ordinance Discussion

Mayor Merkel brought up the topic of extending and expanding the current Continuity of Government (COG) ordinance which would expire at the end of September 2020. She asked about adding general comments from the audience back on the agenda. She then asked the Town Attorney what type of parameters there were for changing the ordinance.

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The Town Attorney stated that the state code section that allows for the COG ordinance was in effect for six months following the disaster. Since the disaster was ongoing and a State of Emergency remained, she suggested that the Council consider re-adopting the ordinance for another six months. She stated it could be repealed or extended in the future, and that she could amend the ordinance as directed by Council. She stated that adding general public comment to the agenda, which had been suspended during the current State of Emergency, was possible. She specifically urged Council to expand the items that they could hear and stated there was an urgency for Council to act on some of these items.

Mayor Merkel asked if the Town Attorney could draft an ordinance to this effect for Council to act on during the first public hearing in September, and the Town Attorney confirmed that she could.

There was brief discussion on this topic.

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

Councilmember Friedrichs asked how Council was able to expand the items, and the Town Attorney stated the Governor had been waiting for an Attorney General's opinion on what could be discussed in virtual meetings. She stated that it was into May of that year before there was clarity about virtual meetings and the issues that could be discussed without a physical quorum. She stated that the Council could expand the limitations to non-critical items such as zoning ordinances. She stated the items that the Council heard up to that night were critical government items.

In response to further queries from Councilmember Friedrichs, the Town Attorney stated that staff could have drafted an expanded COG ordinance following the Attorney General's opinion, but it might have been difficult, given the number of critical items the Council had to consider.

Councilmember Friedrichs then stated she would like to move to in-person meetings due to the decrease in infections and the discomfort of using Webex for some citizens. She stated that because of the restrictions, Council has not been able to discuss all the things citizens were concerned about and expressed concern over using the Webex platform. She stated that she would like to meet in-person, wearing masks, and being socially distant.

Mayor Merkel asked for further discussion on this issue, or other Roundtable comments, and stated that she could open the floor in any direction.

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Councilmember del Aguila then provided comments on the question of expansion on items of urgency. Mayor Merkel stated there had been a lot of decision making and interpretation among attorneys in the state trying to sort out what was allowable in virtual meetings.

Councilmember del Aguila then asked the Town Attorney if public safety was an item of urgency.

The Town Attorney asked Councilmember del Aguila if he meant a matter of urgency or a critical item for governmental function.

In response to queries from Councilmember del Aguila, the Town Attorney stated she would recommend that the Council expand the COG ordinance to begin hearing routine items again, such as amendments to town code, zoning ordinance text amendments, and development cases.

Mayor Merkel then stated that Council mainly discussed COVID-19 in March and April, and then they discussed the financial hit and the budget, but that discussing other items in the “new normal” was now critical.

Councilmember del Aguila stated his support for Mayor Merkel’s suggestions, and he stated that he was still uncomfortable meeting in-person.

Vice Mayor Olem also expressed her support for expanding the COG ordinance. This included items that were passed by the General Assembly on which Council needed to act. She then shared concerns about the numbers for large groups possibly being moved back down to 50 from 100 people. She stated she was concerned about going backward, and spoke about how not having Friday Night Live was saving people from getting sick. She stated she preferred to err on the side of caution, since it would also expose town staff by meeting in-person.

Councilmember Dhakal echoed the majority of his colleagues’ sentiments and stated he would like to see an expansion of the COG ordinance to discuss more issues under the “new normal.” He also stated that he would prefer virtual meetings because he would not want to put the residents at risk of getting sick by starting in-person meetings.

Councilmember Baker stated she would also like to expand what Council could talk about, and she stated for the in-person meetings, the Council would need to have agreement. She stated that other municipalities were meeting throughout the state and that she personally thought the Council should meet in-person for public hearings starting in September or October, with the staff, Council, and audience all distanced with masks.

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Councilmember McKenna expressed his support for opening the Council's conversations outside of COVID-19. He also stated that many people were on extended work-from-home and he expressed concerns about the charter and constitution in regards of succession ~ if all members of Council were to get sick and if they did not have a quorum.

Mayor Merkel stated that a decision would need to be data-driven, and she would like to see the town not be a hot-bed zip code before returning to in-person. She stated that as soon as it was safe, she wanted to return to in-person meetings.

The Town Attorney then summarized the Council's requests to update the COG ordinance to: continue meeting virtually for another six months; expand to general and routine government items; and resume general public comments.

Mayor Merkel stated that she had another Roundtable item, but because she had taken up a lot of time, she would let the other Councilmembers provide their comments first and she would bring up her other item later, if there was time.

2. **Councilmember del Aguila:** Stated that the previous item was a very important discussion and he thanked Mayor Merkel for bringing it up.

Councilmember del Aguila asked the Town Attorney ~ along the lines of expanding items of urgency, public safety, and because of a shooting in the neighborhood ~ about the process of adopting legislation under House Bill 421 and Senate Bill 35. These bills gave localities the ability to prohibit possession and carry of guns in their buildings, parks, recreation centers, community centers, and public spaces used for permitted events.

The Town Attorney stated that following discussion and the consensus of Council, the usual process was to take the item to the Town Manager and Mayor. Following that staff could draft an ordinance. She did not think that the Council had discussed this matter.

Councilmember del Aguila asked the Town Attorney to assume he was bringing this matter forward for discussion.

There was brief discussion on this topic.

Responding to Mayor Merkel's queries about discussing the matter that evening, the Town Attorney stated that the Council needed to change its COG ordinance first. She indicated that if the Council adopted the changes to the ordinance at its first September public hearing, this could be considered for a discussion item at the second work session in September.

**August 4, 2020
(work session)**

Following brief discussion and with the concurrence of Council, staff was asked to put this item on the agenda for discussion at its second work session in September, following approval of the COG ordinance.

3. **Councilmember Friedrichs:** Provided comments on emails Council had received about situations in the town including weather-related issues and continuing neglect. She asked if Council could discuss the condition of some of the blighted houses, following approval of the COG ordinance.

The Town Attorney stated that discussing violations on specific properties was not appropriate. She stated that she could send a report out about action taken on the violations to Council under attorney-client privilege.

The Town Manager added that the issues had been farmed out to staff for enforcement. Once he received answers from staff, he would send the information to the Town Attorney and she could send it out to Council under attorney-client privilege. He stated that they could not openly discuss enforcement actions outside closed meeting.

4. **Vice Mayor Olem:** Provided comments on zoning enforcement issues in town and stated that she tries to connect her neighbors and friends with the right town departments. She stated that she has seen similar issues throughout her time in town. She stated that she was happy to help explain the process and provide citizens with contact information.

5. **Mayor Merkel:**

Outdoor Seating Discussion

Mayor Merkel opened discussion about extending the outdoor seating temporary licenses for restaurants in the town. She suggested pushing the date back to the second week in November.

There was brief discussion about this topic.

Vice Mayor Olem provided comments about being able to continue the outdoor seating with approval from the Alcoholic Beverage Control (ABC) and expressed support for extending the outdoor seating in town.

There was a brief question and answer between Mayor Merkel, the Town Attorney, and the Town Manager about the expiration date of the original licenses and restaurants with existing exterior seating.

**August 4, 2020
(work session)**

The Town Manager and Town Attorney stated that the licenses would expire 100 days after they were signed, which was approximately the Wednesday after Labor Day that year. Mayor Merkel stated that was on September 9, 2020.

Mayor Merkel stated that some issues she saw were parking and using the jersey barriers if there was bad weather, which was why she proposed November. She stated the Council could extend that, or could re-issue the licenses in the spring if COVID was still an issue and ABC still had the latitude to issue the permits.

The Town Manager stated that the ABC had been progressive with helping businesses out in the state, and he did not expect them to pull that back anytime soon.

Mayor Merkel stated that if the ABC did repeal their order, it would negate the town licenses as well.

Councilmember Friedrichs agreed with extending the licenses, and she asked if parking was a problem, especially with the Public Shared Parking program.

The Town Manager stated that staff was being conscious of the parking, and shared that one business had asked about expanding their seating, and he directed them to speak to the other businesses to make sure they were okay with the parking question. He stated that he had not received any parking complaints regarding the outdoor seating in his office.

Councilmember Friedrichs provided further comments on the positive atmosphere downtown, which she would like to continue for as long as possible.

The Town Manager stated that several new businesses were looking to have their outdoor seating open in the spring, which could exacerbate parking issues. For this interim period, he did not see any parking problems in extending the licenses.

Councilmember del Aguila also provided supportive comments and asked about extending the licenses through the last weekend in November.

Mayor Merkel asked if Council should vet a later November date with someone from the Department of Public Works (DPW), and the Town Manager stated he would talk to the Deputy Director of Public works and he did not see an issue. He stated that additional jersey barriers were reserved through a rental company as a contingency.

Following brief discussion and with the concurrence of Council, Mayor Merkel stated the Council would like to extend the outdoor seating licenses for as long as it was possible and reasonable to do so.

**August 4, 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 August 4, 2020 work session was adjourned at 8:31 p.m. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."



**Lisa C. Merkel
Mayor**



**Jessica Sizemore
Legislative Assistant**

Minutes approved by Town Council: September 8, 2020.