TOWN OF Herndon VIRGINIA

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HERNDON TOWN COUNCIL
Work Session
Tuesday, September 1, 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 September 1, 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, August 27, 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.

1. CLOSED MEETING

Roll Call & Determination of Quorum

Mayor Merkel called the September 1, 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 and that the Town Clerk had posted and filed the appropriate notices, including those for the meeting to be held electronically.

On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the Herndon Town Council went into Closed Meeting at 5:33 p.m., under Section 2.2-3711(A)(1) of the Code of Virginia, pertaining to discussion of a specific public employee relative to annual performance review.

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

On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the Herndon Town Council reconvened in public session at 6:48 p.m.

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

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

> Vote: Councilmembers Baker, 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

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 6:49 p.m., Mayor Merkel called a brief recess; and at 7:00 p.m., the meeting reconvened electronically on Webex, all members present, and with Mayor Merkel presiding.

WORK SESSION

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; and Viki L. Wellershaus, Town Clerk.

ANNOUNCEMENTS

The Town Clerk welcomed those listening to the September 1, 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:
  - ❖ 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 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, with Mayor Merkel presiding.

Mayor Merkel stated, for the record, that there was a quorum present electronically that evening. As the 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.

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 COVID-19 based on his continued meetings with Dr. Gloria of Fairfax County and with the Northern Virginia Regional Commission (NVRC). He stated that Fairfax County and Northern Virginia health districts have seen an increase in positive cases since mid-July, and they were trying to pin-point these areas, which included Richmond Highway, Springfield, and Herndon. The Town Manager stated this may be because of eased restrictions for people who were going back to their workplaces. He stated the age shift in cases to 20-39 years of age statewide and nationally was not what was being seen in the county. He stated there was a welcome decrease in cases for the Hispanic community in the region but there was an increase in African American communities. The Town Manager stated that Dr. Gloria still encouraged face masks, hand washing, and staying home when sick, and that individuals should seek a COVID test when sick. He also stated that the Fairfax

County Health Department had discussed engaging community leaders and community partners to help spread information (tailored messaging) about COVID testing based on demographic groups. The Town Manager also stated that contact tracing to specific places would enable testing of an entire group, for example, there was a church in Annandale where everyone was tested. He also stated that the county health department intended to target apartment complexes and day labor sites as potential areas for aggressive testing. The Town Manager stated that for those who had been in contact with a COVID-positive person, they should get tested between days five and seven. He also stated that the county health department would pick individuals up for testing if they lacked transportation. The Town Manager then encouraged everyone to get their flu shots this year and stated staff received information about free flu shots that day. He stated flu shots were imperative to not stress hospitals with flu patients in addition to a possible resurgence in COVID cases.

Questions of Council

In response to queries from Vice Mayor Olem, the Town Manager stated that the state health department had determined they would not publish any data more specific than zip codes due to potential privacy violations and to not cause panic.

Vice Mayor Olem stated she understood that but, because Herndon has several zip codes, she wanted to know which one had the highest number.

The Town Manager stated that Dr. Gloria did not specify the highest zip code, but he thought it was 20170, because it had been flagged since the beginning of the pandemic. This zip code also consistently ranked fifth and sixth in the county for number of cases.

Vice Mayor Olem stated that the 20170 zip code also went outside of Herndon, and the Town Manager added that there were about 43,000 people in the 20170 zip code and, of that number, about 24,800 people lived in the town.

In response to queries from Councilmember Friedrichs about messaging from community leaders, the Town Manager stated that the Chief Communications Officer would provide the Council with messaging to share in any format they wanted. He clarified that Dr. Gloria's plan was to take a more direct approach with leaders directly involved with specific community groups.

Councilmember del Aguila stated that it was difficult to go into an area and swarm individuals with information, and he stated that he had spoken with the Town Manager and was making himself available to help create a more consistent channel of communication to those groups.

The Town Manager stated that community trust and relationships were important to getting things done. He applauded Dr. Gloria's approach and stated there was a need to make sure positive messaging was getting to the receiver.

COMMENTS & DISCLOSURES 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 this meeting's record.

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

GENERAL

4. **To amend and readopt Ordinance 20-O-23 to implement procedures and effectuate temporary changes to address Continuity of Governmental Operations during Pandemic Disaster (COVID-19) and to supersede previously adopted amendments.**

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report dated September 1, 2020, which is on file in the Town Clerk's office. On March 24, 2020, the Council adopted Ordinance 20-O-23 "Continuity of Governmental Operations during Pandemic Disaster (COVID-19)" pursuant to the Code of Virginia. The town's Continuity of Government ordinance (COG) was first amended in April and in May to adjust to the disaster as it unfolded.

The Town Attorney stated that the original ordinance provided for a six-month duration, which would end very soon. Because of the continuing nature of the COVID-19 disaster, it was necessary to amend and reenact the COG ordinance to extend its duration to the full extent provided by law (six month following the conclusion of the disaster), to: include all continuity of government provisions in one ordinance; allow discussion of a broader range of subjects; reinstitute general public comment during virtual meetings; specify land development approvals extended during the emergency; and continue the Town Manager's authority to sign legal and negotiable instruments necessary for continuity of government. Staff recommends approval of the proposed resolution, as presented.

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

In response to queries from Councilmember Friedrichs about items that could be discussed, the Town Attorney stated that the COG ordinance adopted in March

limited discussion to substantive critical issues, and the Council would be returning to the state of discussion prior to the adoption of the COG.

In response to queries from Vice Mayor Olem, the Town Attorney stated that there would not be many state code amendments the Council would need to adopt pursuant to General Assembly action. That was in stark contrast to the number of zoning amendments the Council would consider.

Mayor Merkel stated that with six months of topics there would be heavy agendas coming up. The Town Attorney confirmed heavy agendas moving forward and stated that public comment would be coming back on September 22, 2020.

Mayor Merkel asked about the plan to get this information out to the public. The Town Attorney deferred to the Town Manager, who stated the town would do a comprehensive push of information and that town staff would do whatever was needed to help citizens navigate.

5. **Resolution numbers 20-G-30 through 20-G-36 to ratify Extensions of Licenses pursuant to Ordinance 20-O-23 Continuity of Governmental Operations between the Town and Green Lizard Cycling (20-G-30); Jimmy's Old Town Tavern (20-G-31); Mile 20 at Mediterranean Breeze 20-G-32); Red Kimono LLC, (20-G-33); Russia House Restaurant (20-G-34); Sully's Pour House (20-G-35); and Zeffirelli Ristorante Italiano (20-G-36) for use of public property for temporary outdoor dining.**

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

- **Resolution 20-G-30, Green Lizard Cycling;**
- **Resolution 20-G-31, Jimmy's Old Town Tavern;**
- **Resolution 20-G-32, Mile 20 at Mediterranean Breeze;**
- **Resolution 20-G-33, Red Kimono, LLC;**
- **Resolution 20-G-34, Russia House Restaurant;**
- **Resolution 20-G-35, Sully's Pour House; and**
- **Resolution 20-G-36, Zeffirelli Ristorante Italiano.**

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the comprehensive staff reports dated September 1, 2020, which are on file in the Town Clerk's office. In late May, Northern Virginia entered Phase I of reopening during the State of Emergency, which allowed restaurants to operate outdoors at a reduced capacity. The town sought to assist its businesses by streamlining requirements for the outdoor dining approval process. The streamlined process provided for three types of outdoor dining scenarios, which were: private property, town sidewalks (right-of-way), and town parking lots. The Town Manager signed temporary license agreements with establishments that sought to use town sidewalks and/or parking lots, pursuant to the town's Continuity of Government (COG) ordinance. Such instruments were subject to final consideration and ratification by the Town Council, which they ratified on July 14, 2020. Those licenses were set to expire 100 days from the date of the Agreements, which was prior to next week's meeting.

The Town Attorney stated that the Town Manager signed Temporary License Agreement Extensions with the seven businesses to extend the expiration date to November 30, 2020. Staff recommends approval of the proposed resolutions, as presented.

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

Vice Mayor Olem stated that restaurants not mentioned in the proposed ordinance were not being left out because they were not on town property. The Town Attorney stated that those restaurants did not need town approval but suggested that they should check with the Zoning Administrator to make sure their agreements were still in effect.

The Town Manager stated he would have the Economic Development Manager reach out to those restaurants not located on public land to make sure they were covered in their agreements.

The Town Attorney stated those restaurants should also reach out to their landlords, because their agreements with their landlords could have had different terms.

In response to queries from Councilmember del Aguila, the Town Attorney confirmed that the outdoor seating licensing was being looked at for the following year. She stated that one of the largest items staff had to account for was accommodating the Public Shared Parking Program and recognized the Town Manager for further comments.

The Town Manager agreed with the Town Attorney that outdoor dining was being considered for next year, and stated that he took copious notes during a recent Council meeting where this was discussed. He thought that outdoor dining created vitality in the downtown and stated that staff would update Council on plans for next year.

Mayor Merkel added that this would likely come up in regional conversations with other community leaders and mentioned places such as Alexandria being very on top of things and sharing resources with other localities.

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

6. Resolution 20-G-37 to establish the Herndon Town Council meeting schedule for January 1, 2021 to December 31, 2021.

Mayor Merkel recognized the Town Clerk for the staff report.

The Town Clerk presented the staff report dated September 1, 2020, which is on file in the Town Clerk's office. Under the Town Code, the Council has the authority to modify its meeting schedule. With the development of the 2021 town calendar underway, there was an opportunity to consider modifications to include in the annual calendar before it was printed. Traditionally, the Council's meeting schedule was modified to accommodate participation in National Night Out; federal, state, and county elections; and Thanksgiving holiday travel.

The Town Clerk proposed three modifications for Council's consideration:

1. Reschedule the work session on Tuesday, August 3 TO Wednesday, August4, to allow participation in National Night Out;

2. Reschedule the work session on Tuesday, November 2 **TO** Tuesday, November 9, to allow participation in the 2021 state election; and

3. Forgo conducting a second work session and public hearing in November to accommodate Thanksgiving holiday travel.

Staff recommends approval of the proposed resolution, as presented.

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

Vice Mayor Olem thought that the Chief of Police discussed National Night Out being changed to a date in October next year. The Town Clerk stated that she could verify that for next week's meeting and update the Council on any changes.

Councilmember Friedrichs discussed Election Day and asked the Town Manager if having one less public hearing in November would impact staff.

Mayor Merkel stated that for the past several years, the Council has held only one work session and one public hearing in November, so she was not sure if that had been an issue.

Responding to Councilmember Friedrichs and Mayor Merkel, the Town Manager stated he did not think it would be a problem. Staff would need to cross-level the agendas over surrounding months. He stated that he was not overly concerned about only having one work session and one public hearing in November.

Councilmember Friedrichs expressed concern that Virginia Municipal League (VML) conference held in October could impact the meeting schedule.

In response to Councilmember Friedrichs, the Town Manager stated that the VML Conference would be at Lansdowne in 2021, which would make it easier for the Council.

Mayor Merkel stated that, since the 2021 election was not a town election, the Council could feasibly move that work session to the first Wednesday in November if Council wanted to.

Vice Mayor Olem stated that there did not seem to be an issue with holding one work session and public hearing in November over the past several years because staff has time to plan the items on the agenda.

Councilmember del Aguila stated that he was okay with having the work session the week after election day.

Councilmember del Aguila provided comments about activities being cancelled at the Herndon Community Center on Election Day and Mayor Merkel concurred.

The Town Manager concurred as well and stated that was something the town needed to do to help eliminate confusion on Election Day.

Mayor Merkel stated she had three calendar updates for 2020 and asked if it was appropriate to discuss this now.

The Town Clerk stated it would be best to discuss them now.

Mayor Merkel asked for clarification on the following:

1. Asked if National Night Out was on Tuesday, October 6, 2020, and would the Council need to change its meeting that week to Wednesday.

Responding to Mayor Merkel, the Town Clerk stated she could confirm with the Chief of Police the following day.

2. The Council had previously moved its first public hearing in October to Wednesday, October 14, 2020, due to participation in the VML Conference. The conference was now virtual, scheduled for October 7-8, 2020, and would not impact the meeting schedule. She asked if the Council wanted to move this public hearing back to Tuesday, October 13, 2020.

   Responding to Mayor Merkel, Vice Mayor Olem stated that changing the meeting date would require Council action.

   Following discussion and with the concurrence of Council, staff was asked to add a resolution that would move the public hearing back to Tuesday, October 13, 2020, to the next agenda.

3. Asked if the town should make Election Day a holiday, since the state had made it a holiday for state employees. She stated that the last time Council considered adding a holiday, the estimated cost was approximately $60,000.

Responding to Mayor Merkel, the Town Manager stated that paid town holidays average about $55,000 to 60,000 and include items such as overtime for the Herndon Police Department and refuse crews. The town would need to make a separate determination if it was a holiday even though it was declared a state holiday. The Town Manager stated that he has certain administrative powers to declare holidays, like he did for Juneteenth earlier this year.

Mayor Merkel stated that making it a holiday this year would be a one-year action.

The Town Manager agreed with Mayor Merkel. He stated holidays were in the Town Code, but he was able to declare a holiday with Council input. He emphasized that he would never declare a holiday without Council's input.

Councilmember Baker stated she did not support making Election Day a holiday due to voting options available this year and because the town had made Juneteenth a paid holiday. She stated Council could consider it for future years.

Vice Mayor Olem agreed that it should not be paid a holiday and stated that employers often provide flexibility to allow their employees to vote.

Councilmember Friedrichs voiced her support for Councilmember Baker's comments, especially due to the cost. She thought it would be fine to give employees time to vote.

Councilmember Dhakal concurred with his colleagues' comments about not making Election Day a holiday.

Mayor Merkel agreed with her colleagues about not making Election Day a paid holiday this year.

Mayor Merkel stated the 2021 calendar item would remain on the General portion of the 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. **Councilmember Friedrichs:** Stated citizens had asked her questions about how to help small businesses in ways other than outdoor dining and helping businesses apply for federal money. She asked how the town could provide support for small businesses, particularly in advertising, even though she understood that the town could not advertise for a specific business. She asked if there were creative ways the town could support the town's restaurants and businesses.

   Mayor Merkel stated that she thought she had seen a list of Herndon businesses put out by the Economic Development team, and the Town Manager confirmed. The Town Manager then stated there was a "Herndon's Open for Business" initiative put out by Herndon Community Television (HCTV) that highlighted different businesses and would continue this with different businesses going forward. He stated that the town had to consider the legal constraints in not being able to advertise for businesses.

   The Town Manager stated staff was still seeking ways to highlight the town as being open. He stated that the Economic Development Manager continued to reach out to businesses, and he also provided information on measures he took at the outset of the pandemic, including relaxing the sign ordinance. He stated that the literature coming out of the City of Alexandria that Mayor Merkel referenced earlier in the meeting was public health related, and he, along with his regional and county-wide counterparts, were struggling to find new ways to promote their locality's businesses.

   There was a brief question and answer session between Councilmember Friedrichs and the Town Attorney about the legal requirements for the town and advertising for businesses.

In response to queries from Councilmember Friedrichs, the Town Attorney stated that "the overarching prohibition is that the Constitution of Virginia prohibits localities from funding or giving public monies to private entities." Sums of money spent that were not budgeted for specifically or donated would be problematic. She also stated the town has not done that in the past and localities do not do that because there was no good way to fairly apportion.

In response to queries from Councilmember Friedrichs about the "Dine On Herndon" program used in the past, the Town Attorney stated she thought that worked because everyone was treated the same and it was a budgeted item.

Mayor Merkel concurred with the Town Attorney and stated every restaurant in town was listed in the "Dine On Herndon" initiative.

Councilmember Friedrichs asked if it would be permissible if the town did not single out one business and supported all businesses equally.

Responding to Councilmember Friedrichs, the Town Attorney stated that would probably work, but she suggested that Councilmember Friedrichs check with the Town Manager to see what the town was already doing on the website or through other means.

Councilmember Friedrichs stated that she knew what the town was doing but she did not think it was generating the kind of response that the businesses needed.

2. **Vice Mayor Olem:** Stated that she was pleased to see two videos from HCTV promoting the town, where Mayor Merkel showed the town's eclectic collection of businesses.

3. **Mayor Merkel:** Stated that the videos Vice Mayor Olem referenced were from the town's Communications and Economic Development Department.

Mayor Merkel spoke with the Economic Development Manager about the Mayor's New Business Breakfast that usually occurs in October. They discussed having a Webex for breakfast or happy hour and using smaller groups to allow for broader attendance. She stated more information on this event would be forthcoming.

September 1, 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 September 1, 2020 work session was adjourned at 7:59 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: September 22, 2020.