

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON COUNCIL CHAMBERS BUILDING *
765 LYNN STREET
OCTOBER 6, 2020
7:00 PM**

* The meeting is being held 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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments. Public comments will be received through the town clerk at town.clerk@herndon-va.gov.

CALL TO ORDER

1. Roll Call & Determination of Quorum
2. Comments from the Town Manager

GENERAL

3. Ordinance 20-O-55, to amend Chapter 10 (BUILDING AND BUILDING REGULATIONS), Article II (STANDARDS), Section 10-21 (Adoption of statewide building code) of the Code of the Town of Herndon to update language to accommodate adoption of future editions.
4. Ordinance 20-O-56, to amend Chapter 66, (STREETS, SIDEWALKS AND CERTAIN OTHER PUBLIC PLACES), Article II, (Street Excavations) to develop standards for utility distribution or transmission poles and to establish a maximum \$500 fee for administrative review eligible projects in Section 66-37 (Fee) pursuant to Virginia Code 15.2-2316.4.
5. Ordinance 20-O-57, to amend Chapter 26 (ENVIRONMENT), Article II (TREE PROTECTION AND PRESERVATION), Section 26-24 (Tree removal on private property) of the Code of the Town of Herndon to clarify Town actions consistent with state code.
6. Resolution 20-G-46, to ratify an Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Elden Street Players.
7. Resolution 20-G-47, to ratify an Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and the Board of Supervisors of Fairfax County, Virginia.

ROUNDTABLE

CLOSED MEETING

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

STAFF REPORT

Town Council
October 6, 2020

Title:

Ordinance to amend Chapter 10 (BUILDING AND BUILDING REGULATIONS), Article II (STANDARDS), Section 10-21 (Adoption of statewide building code) of the Code of the Town of Herndon to update language to accommodate adoption of future editions.

Staff Contact:

Lesa J. Yeatts, Town Attorney
(703) 787-7370
lesa.yeatts@herndon-va.gov

Description:

The Commonwealth of Virginia has adopted a Uniform Statewide Building Code. While the former version of this section adopted and incorporated the Uniform Statewide Building Code this amendment clarifies that the Town adopts the current version and any future amendments thereto. Additionally, the new language specifies that a copy of the Uniform Statewide Building Code and this section are maintained in the Office of the Building Official.

Fiscal Impact:

None.

Staff Recommendation:

The Mayor and Town Council approve the draft ordinance as proposed.

Attachments:

Ordinance.

Prepared and Approved by:

A handwritten signature in black ink, reading "Lesa J. Yeatts". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

OCTOBER 13, 2020

Ordinance- to amend Chapter 10 (BUILDING AND BUILDING REGULATIONS), Article II (STANDARDS), Section 10-21 (Adoption of statewide building code) of the Code of the Town of Herndon to update language to accommodate adoption of future editions.

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

1. The following sections of the Herndon Town Code (2000), as amended, is amended and re-ordained as follows:

Sec. 10-21. - Adoption of statewide building code.

- (a) ~~There is hereby adopted and incorporated by reference the Virginia Uniform Statewide Building Code (2009 edition) adopted by order of the Virginia Board of Housing and Community Development, effective March 1, 2011, as amended, and as may be amended from time to time.~~ **The Virginia Uniform Statewide Building Code, as adopted by Virginia Board of Housing and Community Development and currently in effect or hereafter amended, is hereby adopted by the Town and incorporated herein as if set out in its entirety.** This code contains provisions for new construction; property maintenance; dwellings, plumbing, mechanical and fire prevention regulations, among others. **Copies of the Virginia Uniform Statewide Building Code, together with a copy of this chapter, shall be filed and maintained in the office of the building official.**

(Code 1992, § 5-1; Ord. No. 04-O-16, § 1, 4-27-2004; Ord. No. 11-O-31, § 1, 12-13-2011)

2. This ordinance shall be effective on and after the date of its adoption.



STAFF REPORT

**Town Council Work Session
October 6, 2020**

Title: Ordinance – to amend Chapter 66, (STREETS, SIDEWALKS AND CERTAIN OTHER PUBLIC PLACES), Article II, (Street Excavations) to develop standards for utility distribution or transmission poles and to establish a maximum \$500 fee for administrative review eligible projects in Section 66-37 (Fee) pursuant to Virginia Code 15.2-2316.4.

Staff Contact: David Stromberg, AICP, Zoning Administrator
david.stromberg@herndon-va.gov (703)787-7380

Summary Information:

The Town Council adopted Zoning Ordinance Text Amendment ZOTA #19-02 on January 14, 2020, establishing requirements and the administrative process for proposed small cell facilities and other administrative review eligible projects (AREPs) located on private property.

This ordinance amendment is the companion town code amendment that will establish requirements and the administrative process for proposed small cell facilities and other AREPs on public property. This amendment was originally scheduled to immediately follow ZOTA #19-02 but was delayed due to the COVID-19 pandemic.

This ordinance amendment will bring the town code more into alignment with the Code of Virginia.

Background:

The Virginia General Assembly passed legislation in 2018 (HB 1258 & SB 405) to facilitate the implementation of 5G wireless facilities in the Commonwealth. 5G is intended to provide faster internet speeds and data capacity to mobile devices. Antennae for 5G are typically located lower to the ground and much closer together than traditional antennae that provide 4G and voice services.

The language in Section 15.2-2316.3 of the Code of Virginia defines and places limitations on Administrative Review Eligible Projects (AREP). An AREP is defined as either a new

structure that is not more than 50 feet tall or a co-location on any existing structure of a wireless facility that is not a small cell facility.

The state code puts the following limitations on localities:

- A special exception requirement cannot be required for any AREP. Only administrative review is allowed.
- Application fees are limited to a maximum of \$500.
- Localities must approve or disapprove an application within 60 days.
- Zoning approval isn't required when a replacement wireless facility is within 6 feet of an existing facility and the new wireless facility is the same size or smaller.
- Zoning cannot impose a setback requirement that is more stringent than other structures, including utility poles.
- Local moratoriums on small cell facilities are prohibited.

The State Code does allow localities to limit the number of new wireless facilities in a specific location and does allow localities to require a public hearing for facilities located within a historic district.

Staff Analysis:

This specific amendment applies to town-owned, public right-of-way. The majority of applications submitted to the town for review have been proposed on replacement streetlights or utility poles located in the right-of-way.

These amendments to Chapter 66 (Streets, Sidewalks, and Certain Other Places) are needed to ensure comprehensive regulation of small cell facilities within the town. Small cell facilities are already regulated on private property with the adoption of Chapter 78 (Zoning) amendments in January.

Town Council Alternatives:

The following alternatives are available to the Town Council regarding this town code amendment:

1. Approve the amendment
2. Deny the amendment
3. Direct staff to revise the amendment and bring it before the council at a later date

Staff Recommendation:

Staff recommends the Town Council approve the amendment of Chapter 66 of the Town Code as drafted.

Attachments:

1. Draft Ordinance



David Stromberg, AICP
Zoning Administrator

TOWN OF HERNDON, VIRGINIA

ORDINANCE

October 13, 2020

Ordinance – to amend Chapter 66, (STREETS, SIDEWALKS AND CERTAIN OTHER PUBLIC PLACES), Article II (Street Excavations) to develop standards for utility distribution or transmission poles and to establish a maximum \$500 fee for administrative review eligible projects in Section 66-37 (Fee) pursuant to Virginia Code 15.2-2316.4.

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

1. Chapter 66 (STREETS, SIDEWALKS, AND CERTAIN OTHER PLACES, Herndon Town Code (2000)), is amended as follows:

DIVISION 1. – GENERALLY

DIVISION 2. – PERMIT

Section 66-36 – Required

No person shall break, dig up or open or cause to be broken, dug up or opened any street, public easement area, or alley, or portion thereof within the town without having first applied for and obtained a permit to do so from the director of public works.

Section 66-36.1 – Applications.

(a) Application not associated with an administrative review eligible project or small cell facility requires:

(1) Sketch plan meeting the following criteria:

a. Drawings at a standard engineering scale no larger than 1"=30' on standard sheet sizes of 8.5"x11" (letter), 11"x17" (ledger), or 24"x36".

b. Property lines, where appropriate, and the street right-of-way line, with the location of the work with reference to a fixed point in the street. This information shall be based on surveyed information (i.e. record data or field run survey) unless otherwise approved by the director of public works.

c. All proposed improvements and the proposed removal of existing structures. Provide dimensions showing size of structures and proximity from property lines.

- d. Existing easements in the vicinity of the work. Provide dimensions and recordation information.
 - e. Where surface or underground work is involved, a cross section indicating existing conditions and proposed changes.
 - f. Where grading operations are involved, the pavement, shoulder, ditch and slope.
 - g. Existing and proposed topography in 2-foot contour intervals.
 - h. Any tree which is to be removed, and the location and description of trees and shrubs within and adjacent to the right-of-way.
- (2) For underground installations, a sketch plan shall include the following in addition to what is outlined in Section 66-36.1(a)(1):
- a. The exact location and dimensions of conduits, pipes, vaults, manholes, crossings and other installations.
 - b. Type (concrete, iron, etc.).
 - c. Depth of covering material.
 - d. Outlets, showing type and size.
 - e. Design and location of identification indicators.
- (3) Authorization from the owner or owner's authorized agent. If multiple owners, all owners must provide authorization.
- (4) Existing and proposed height if the work involves the replacement of a utility pole.
- (5) Traffic control plan with applicable notes as referenced by all federal, state, and local regulations. If the required work cannot be covered by a standard plate from the MUTCD or WAPM the traffic control plan must be sealed by a professional engineer licensed to practice in the Commonwealth of Virginia.
- (6) Other information required by the director of public works as necessary to review and approve the construction drawings, not in conflict with the Town's required ordinances and specifications.
- (b) Application associated with an administrative review eligible project or small cell facility requires:
- (1) All items required under Section 66-36.1(a).
 - (2) A sketch plan shall also include the following:

a. *Location and height of all existing and proposed equipment with dimensioned drawings of every proposed element including wiring and hardware.*

b. *Dimensioned drawings of all elements to be installed showing cubic area and outside dimensions in both aggregate and as individual units.*

(3) Additional conditions.

a. *All wiring, cables, and conduits must be located in a fully enclosed structure or match the color of the utility or distribution transmission pole.*

b. *All antennas and equipment related to the small cell facility, to include any ground-mounted equipment, must be removed within 120 days after such antennas or related equipment are no longer in use.*

c. *When located within the heritage preservation overlay district, all facilities must comply with Section 78-71.13(d)(3)(a) of the zoning ordinance.*

Section 66-37 – Fee

	Type	Cost for first item	Cost for two or more/each where applicable
(1)	Aboveground structure including poles, pedestals, fire hydrants, towers and the like	\$20.00 per structure	\$10.00

(11)	<i>Small cell facilities on an existing structure</i>	<i>\$100 per facility for the first 5 facilities and then \$50 per facility</i>	
(12)	<i>Administrative review eligible project</i>	<i>\$500 per structure</i>	

DIVISION 3 – REGULATIONS

74

75 *Section 66-62. Residential driveway aprons.*

76 *(a) Parcels in residential districts are limited to a maximum of one driveway apron per*
77 *parcel.*

78 *(b) Driveway aprons shall be limited to a maximum of twenty feet in width.*

79 *(c) Requests for exceptions to Section 66-62(a) or 66-62(b) shall be submitted in writing to*
80 *the Director and specify the need for the exception.*

81 Sections ~~66-62~~**63** – 66-80. – Reserved.

82 2. This ordinance shall be effective on and after the date of its adoption.

STAFF REPORT

Town Council
October 6, 2020

Title:

Ordinance to amend Chapter 26 (ENVIRONMENT), Article II (TREE PROTECTION AND PRESERVATION), Section 26-24 (Tree removal on private property) of the Code of the Town of Herndon to clarify Town actions consistent with state code.

Staff Contact:

Lesa J. Yeatts, Town Attorney
(703) 787-7370
lesa.yeatts@herndon-va.gov

Description:

This amendment is necessary to clarify language and provide consistency with state enabling authority:

1. Amendment clarifies that Town's authority on private property applies only when a dead or diseased tree constitutes a **public** hazard to life or property.
2. Clarifies "owner" means "property owner".
3. Clarifies that consistent with state law, the remedy the town has in the event the property owner fails to remove the tree is to seek an injunction through the Circuit Court ordering the removal of the tree on private property.
4. Violation of this section is a misdemeanor punishable by a \$250.00 fine pursuant to Town Code §26-26 and §1-14.
5. Clarifies that an appeal of the Urban Forester's decision is to the Town Manager not the Town Council.

Fiscal Impact:

None.

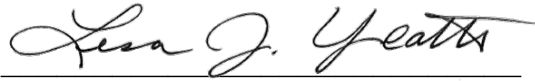
Staff Recommendation:

The Mayor and Town Council approve the draft ordinance as proposed.

Attachments:

Ordinance.

Prepared and Approved by:

A handwritten signature in black ink, reading "Lesa J. Yeatts". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

OCTOBER 13, 2020

Ordinance- to amend Chapter 26 (ENVIRONMENT), Article II (TREE PROTECTION AND PRESERVATION), Section 26-24 (Tree removal on private property) of the Code of the Town of Herndon to clarify Town actions consistent with state code.

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

1. The following section of the Herndon Town Code (2000), as amended, is amended and re-ordained as follows:

Sec. 26-24. - ~~Tree removal~~ Dangerous or diseased trees on private property.

- (a) The town shall have **authority to require a property owner** ~~the right to cause the removal of~~ all or a portion of any dead or diseased tree on **their** private property within the town, when such tree constitutes a **public** hazard to life or property, or harbors insects or disease which constitutes a threat to other trees within the town. The urban forester shall notify the **property** owner in writing by certified mail of such tree, citing the tree's condition and the corrective action required. ~~Disposal of an insect infested or diseased tree shall also be done in the manner prescribed or approved by the urban forester.~~ Removal or other required work shall be done by such **property** owner at the **property** owner's expense within 15 days after receipt of the notice that indicates a **public** hazard to life or property exists. It shall be unlawful for the **property** owner to fail to remove such tree or to perform other work specified by the town. In the event of failure of the **property** owner to comply with such provisions, the town shall have the authority ~~to remove such tree and charge the cost of removal to the owner~~ **seek injunctive relief in the Circuit Court for the County of Fairfax.** If removal or other work is required by the urban forester and is not deemed to constitute a hazard to life or property, then a mutually agreed upon time frame to perform the work will be determined.
- (b) An appeal to the town ~~council~~ **manager** may be taken by any person aggrieved by a decision of the urban forester. Such appeal shall be made within 14 days of receipt of the notice from the urban forester by filing with the town manager a written appeal specifying the grounds of such appeal.

(Code 1992, § 24.5-4)

2. This ordinance shall be effective on and after the date of its adoption.

STAFF REPORT

Town Council
October 6, 2020

Title:

Resolution to ratify an Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Elden Street Players.

Staff Contact:

Lesa J. Yeatts, Town Attorney
(703) 787-7370
lesa.yeatts@herndon-va.gov

Description:

The Elden Street Players currently lease 1,275 sq. ft of space for rehearsal at 397 Herndon Parkway. The rent for this space is \$1.00 per lease term, consistent with similar leases on Town property. This lease will expire on October 14, 2020. This Extension of Lease extends the current lease for 1 year so that it will expire on October 14, 2021.

The Town Manager has signed the Extension of Lease pursuant to the Town's Continuity of Government Ordinance. The Town Council must now consider ratification of the Extension of Lease to The Elden Street Players in order to extend the expiration date to October 14, 2021 to finalize its approval.

Fiscal Impact:

None.

Recommendation:

I recommend that the Town Council approve the Resolution as proposed.

Attachments:

- Resolution
- Agreement Extension

Prepared and Approved by:

A handwritten signature in cursive script, reading "Lesa J. Yeatts".

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

OCTOBER 13, 2020

Resolution- to ratify an Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Elden Street Players.

WHEREAS, the parties entered into a Lease Agreement dated October 15, 2019 for 1,275 sq. ft of space for rehearsal in the Town's building at 397 Herndon Parkway; and

WHEREAS, the Lease Agreement expires on October 14, 2020; and

WHEREAS, Town and Lessee desired to extend the term of the Agreement to expire on October 14, 2021; and

WHEREAS, The Extension of Lease Agreement was signed by the Town Manager and ratified by Town Council; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Extension of Lease dated September 18, 2020 and signed by the Town Manager between the Town of Herndon and The Elden Street Players for space in the Town's building at 397 Herndon Parkway in Herndon.

Extension of Lease Agreement Pursuant to Ordinance 20-O-23 Continuity of Governmental Operations due to State of Emergency, Pandemic Disaster Covid-19

Pursuant to the powers conferred upon the Town Manager by Ordinance 20- O-23, as amended, this Extension of Lease Agreement dated September 18, 2020 hereby extends the October 14, 2020 termination date of the existing Lease Agreement between the TOWN OF HERNDON, a municipal corporation (Landlord) and THE ELDEN STREET PLAYERS, a Virginia corporation (Tenant), dated October 15, 2019, (the Lease) for 1,275 square feet of space at 397 Herndon Parkway (the Premises), as set out in this Extension of Lease (the Extension).

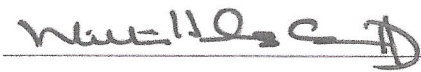
THEREFORE, for the consideration stated in the Lease, the parties agree as follows:

1. The Lease is incorporated by reference.
2. The Lease shall terminate on October 14, 2021.
3. In all other respects, the Lease is confirmed.

TOWN OF HERNDON, VIRGINIA

THE ELDEN STREET PLAYERS

By:



By:



Name:

William H. Ashton II

Name:

Vicki Kile

Title:

Town Manager

Title:

President

APPROVED AS TO FORM

By:



Name:

Lesa J. Yeatts

Title:

Town Attorney

STAFF REPORT

Town Council
October 6, 2020

Title:

Resolution to ratify an Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and the Board of Supervisors of Fairfax County, Virginia.

Staff Contact:

Lesa J. Yeatts, Town Attorney
(703) 787-7370
lesa.yeatts@herndon-va.gov

Description:

The Board of Supervisors of Fairfax County, Virginia currently leases 185.4 sq. ft of office space at 397 Herndon Parkway for Supervisor John Foust. The rent for this space is \$1.00 per year, which is consistent with similar leases on Town property for office space. This lease will expire on November 11, 2020. This Extension of Lease extends the current lease for 1 year so that it will expire on November 11, 2021.

The Town Manager has signed the Extension of Lease pursuant to the Town's Continuity of Government Ordinance. The Town Council must now consider ratification of the Extension of Lease to Board of Supervisors of Fairfax County, Virginia in order to extend the expiration date to November 11, 2021 to finalize its approval.

Fiscal Impact:

None.

Recommendation:

That the Town Council approve the Resolution as proposed.

Attachments:

- Resolution
- Agreement Extension

Prepared and Approved by:

A handwritten signature in cursive script, reading "Lesa J. Yeatts".

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

OCTOBER 13, 2020

Resolution- to ratify an Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and the Board of Supervisors of Fairfax County, Virginia.

WHEREAS, the parties entered into a Lease Agreement dated November 12, 2019 for 185.4 sq. ft of office space in the Town's building at 397 Herndon Parkway; and

WHEREAS, the Lease Agreement expires on November 11, 2020; and

WHEREAS, Town and Lessee desired to extend the term of the Agreement to expire on November 11, 2021; and

WHEREAS, The Extension of Lease Agreement was signed by the Town Manager and ratified by Town Council; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Extension of Lease dated September 18, 2020 and signed by the Town Manager between the Town of Herndon and the Board of Supervisors of Fairfax County, Virginia for space in the Town's building at 397 Herndon Parkway in Herndon.

Extension of Lease Agreement Pursuant to Ordinance 20-O-23
Continuity of Governmental Operations due to State of Emergency,
Pandemic Disaster Covid-19

Pursuant to the powers conferred upon the Town Manager by Ordinance 20- O-23, as amended, this Extension of Lease Agreement dated September 18, 2020 hereby extends the November 11, 2020 termination date of the existing Lease Agreement between the TOWN OF HERNDON, a municipal corporation (Landlord) and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (Tenant), dated November 12, 2019, (the Lease) for 185.4 square feet of space at 397 Herndon Parkway (the Premises), as set out in this Extension of Lease (the Extension).

THEREFORE, for the consideration stated in the Lease, the parties agree as follows:

1. The Lease is incorporated by reference.
2. The Lease shall terminate on November 11, 2021.
3. The language of Paragraph 5 of the Lease is deleted and replaced with:
 5. Liability Insurance. Tenant represents that it is a self-insured governmental body with an AAA bond rating with S&P, Moody's and Fitch. Landlord understands and accepts that the Tenant is self-insured. Tenant is prescribed by law from extending its self-insurance to outside parties and nothing herein shall be deemed an expressed or implied waiver of the sovereign immunity of the Tenant.
4. In all other respects, the Lease is confirmed.

Signatures on the following page

TOWN OF HERNDON, VIRGINIA

**BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA**

By: William H. Ashton II

Name: William H. Ashton II

Title: Town Manager

By: Joseph M. Mondoro

Name: Joseph M. Mondoro

Title: Chief Financial Officer

APPROVED AS TO FORM

By: Lesa J. Yeatts

Name: Lesa J. Yeatts

Title: Town Attorney