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**HERNDON TOWN COUNCIL
Work Session
Tuesday, October 6, 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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments, Mayor Merkel has stated that the October 6, 2020 Herndon Town Council Work Session would be by electronic means.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, October 1, 2020. In attendance electronically were:

- Mayor Lisa C. Merkel, presiding;
- Vice Mayor Sheila A. Olem;
- Councilmember Jennifer K. Baker;
- Councilmember Cesar del Aguila;
- Councilmember Pradip Dhakal;
- Councilmember Signe Friedrichs; and
- Councilmember Bill McKenna.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; David Stromberg, Zoning Administrator; and Margie C. Tacci, Deputy Town Clerk.

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ANNOUNCEMENTS

The Deputy Town Clerk welcomed those listening to the October 6, 2020 work session and stated that night's regularly scheduled Herndon Town Council meeting was a virtual meeting, which was being 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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments.
- Proper notice of the electronic meeting was provided in accordance with the Code of Virginia;
 - Agenda and meeting materials, along with information for viewing the meeting and submitting comments for the record are available on the town's website; and
 - Electronic meetings will begin with a roll call to determine a quorum and all votes, including adjournment, will be by roll call vote.

CALL TO ORDER

1. Roll Call & Confirmation of Quorum

Mayor Merkel called the October 6, 2020, work session to order at 7:00 p.m. and asked the Deputy Town Clerk to call the roll for attendance. Mayor Merkel asked each Councilmember to respond by clearly stating their name and indicating they were present.

Following the roll call for attendance, Mayor Merkel confirmed there was an electronic quorum present that evening. All members were present electronically, with Mayor Merkel presiding. 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.

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2. Comments from the Town Manager

Mayor Merkel recognized the Town Manager for an update related to the emergency.

The Town Manager stated that he sent out Halloween Guidance to Council late last week, and that information had been shared with the public. He encouraged parents to go to the town's social media pages to review that guidance which came from the Virginia Department of Health through the Fairfax County Department of Health.

He stated the numbers in Northern Virginia continued to be doing fairly well. He said the things they were doing seem to be having an effect. He reminded people to wear masks, wash hands, social distance, and stay home when sick. He attributed the region's numbers to compliance with these items.

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Merkel asked the Deputy Town Clerk whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and the Deputy Town Clerk stated that she had not received any comments or any transactional disclosures for that evening's meeting.

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.

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report dated October 6, 2020 which is on file in the Town Clerk's office. She stated 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.

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

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

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.**

Mayor Merkel recognized the Zoning Administrator for the staff report.

The Zoning Administrator presented the staff report dated October 6, 2020, which is on file in the Town Clerk's office. He stated that 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 proposed ordinance was the companion town code amendment that would establish requirements and the administrative process for proposed small cell facilities and other AREPs on public property. He stated that the proposed amendment applied to town-owned, public rights-of-way. The proposed amendments would provide comprehensive regulation of small cell facilities in town and would align the town code more with the Code of Virginia. State Code allowed 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. This amendment was originally scheduled to immediately follow ZOTA #19-02 earlier in the year but was delayed due to the COVID-19 pandemic. Staff recommends approval of the proposed ordinance, as presented.

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

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.**

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report dated October 6, 2020 which is on file in the Town Clerk's office. The proposed amendment would clarify language and provide consistency with state enabling authority to include the following provisions which were outlined in the staff report:

1. Clarified that town's authority on private property applies only when a dead or diseased tree constitutes a public hazard to life or property;

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2. Clarified "owner" means "property owner";
3. Clarified 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. Stated that violation of this section is a misdemeanor punishable by a \$250.00 fine pursuant to the town code; and
5. Clarified that an appeal of the Urban Forester's decision was to the Town Manager not the Town Council.

Staff recommends approval of the proposed ordinance, as presented.

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

Councilmember Dhakal asked about a resident's former request to remove a tree from private property, and the Town Attorney stated that case prompted her to review the code. She then found town code was inconsistent with state code. She stated this language clarified the law, in accordance with the state code, so that citizens would not be asking the town to remove trees on private property. The town could notify citizens if they have a tree which was a danger to public safety.

In response to Councilmember del Aguila, the Town Manager confirmed he had agreed to take on this responsibility.

The Town Attorney stated this would clarify what the town could not do, with respect to tree removal, in response to Councilmember Friedrichs' queries.

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.**

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report dated October 6, 2020 which is on file in the Town Clerk's office. The Elden Street Players currently lease 1,275 square feet of town-owned 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 would expire on October 14, 2020 and the Extension of Lease extended it for one year to October 14, 2021.

The Town Manager signed the Extension of Lease pursuant to the town's Continuity of Government (COG) Ordinance, which the Council must ratify. Staff recommends approval of the proposed resolution, as presented.

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There was no discussion on this item.

With the concurrence of Council, staff was requested to add this item to the Consent agenda for next week's meeting.

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.**

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report dated October 6, 2020 which is on file in the Town Clerk's office. The Board of Supervisors of Fairfax County, Virginia currently leases 185.4 square feet of town-owned office space at 397 Herndon Parkway for Dranesville District Supervisor John Foust. The rent for this space was \$1.00 per year, consistent with similar leases on town property. This lease would expire on November 11, 2020 and the Extension of Lease extended it for one year to November 11, 2021.

The Town Manager signed the Extension of Lease pursuant to the COG Ordinance, which the Council must now ratify. Staff recommends approval of the proposed resolution, as presented.

There was no discussion on this item.

With the concurrence of Council, staff was requested to add this item to the Consent agenda for next week's meeting.

ROUNDTABLE

1. **Councilmember Dhakal:** Stated he wanted to share some concerns of public interest.

Parking

Councilmember Dhakal stated the parking issue in the town has become more difficult, and he stated a lot of residents were concerned. He also stated a specific issue was that construction vehicles were being left and there was littering going on. He asked what could be done to make sure residents have enough parking and how they could differentiate resident from non-resident cars. He stated this issue was getting bigger, and he wanted to find a way to make sure the parking spaces in the town were not being abused. He asked if Council and staff could analyze this issue.

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Livestreaming Meetings

Councilmember Dhakal stated that a lot of jurisdictions have been livestreaming their meetings on social media. He wanted Council to consider using the town's social media channels to livestream the Council meetings for more public engagement and participation.

Council Discussion

Councilmember McKenna provided comments about the parking issues by stating residents having parking passes was something they could consider. He stated he could see parking becoming more of an issue when Metro comes.

Councilmember Friedrichs stated that parking has been an ongoing issue, and she stated she liked Councilmember McKenna's idea of parking passes and provided comments about removing the Herndon sticker in the past. She also asked about the legal issues and regulations regarding parking and the use of the streets.

The Town Manager stated the construction vehicle issue was being looked at pre-COVID and would be looked at again. He also stated that the residential parking permit that was created for Old Hunt Way regarding the high school was something that was designed to be able to have additional zones for Metro and other areas of town. He also stated that under state code the streets are public, and the town has a little more latitude with residential parking permit programs.

Councilmember del Aguila stated he wanted to address the transparency issue and that he would support publicizing audios and videos to be available because citizens do want to see how Council comes to decisions.

Councilmember del Aguila stated parking was becoming more of an issue, but he did not want to go back to having stickers on cars.

Mayor Merkel agreed with Councilmember del Aguila's comments about town stickers.

Vice Mayor Olem stated that she thought the Town Manager had authority to work out the residential parking with citizens and did not need to come to Council. She also stated there was something the town could enforce for construction vehicles being parked on the streets that was just not being enforced anymore.

2. **Councilmember Baker:** Stated she thinks there was a safe way for Council to meet in person, and virtual meetings were missing a lot of public participation that was present at in-person meetings. She stated she would like to see Council on the path back to in-person, at least, for public hearings.

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Councilmember Dhakal clarified that his request was to have virtual meetings livestreamed on social media for more participation, engagement, and feedback.

Mayor Merkel stated she agreed with Councilmember Baker's comments and stated that she and the Town Manager are on calls every week looking at the data and how to proceed safely.

3. **Councilmember Friedrichs:** Supported Councilmember Baker's comments about in-person meetings. She also provided updates from a meeting of the Council on Foreign Relations Economic Update which she sat in on that was about rainy-day funds. She stated she would be forwarding the PowerPoint presented to Council when she received it and provided comments on the ways rainy-day funds are looked at and how the town should use them.
4. **Vice Mayor Olem:** Stated Fall Cleanup would be October 21st to 23rd on the residents' trash day and thanked the Department of Public Works. She shared that she attended the Hispanic Business Reception where the former Chair of the Dulles Regional Chamber of Commerce, Danny Vargas, spoke about a Hispanic Museum that was recently voted on by Congress. She stated she could share a copy of his speech with anyone who wanted it.
5. **Councilmember del Aguila:** Provided queries regarding the town's decision to hold off on making restaurants pay previously-collected meals taxes during COVID-19. He asked for an update on how many of those taxes had been paid.

The Town Manager stated they could provide that information in a report which he and the Director of Finance could have available for his Dispatch on Friday or in the next week or two. He also stated the restaurants still had to provide reports and the town was keeping track of their accounts.

8. **CLOSED MEETING**

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.

On motion of Councilmember McKenna, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the Herndon Town Council went into Closed Meeting at 7:46 p.m., under Section 2.2-3711 (A)(3) of the Code of Virginia, 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.

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

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RECESS

At 7:46 p.m. Mayor Merkel called a brief recess, and at 7:48 p.m., the closed meeting reconvened by electronic meeting using Cisco Webex, all members present, and with Mayor Merkel presiding.

Mayor Merkel took attendance by roll call and asked if there was anyone present whose name she did not call. Hearing none, the closed meeting continued.

CLOSED MEETING

On motion of Councilmember Baker, seconded by Vice Mayor Olem, and carried by unanimous roll call vote by electronic means, the Herndon Town Council reconvened in public session at 9:25 p.m.

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

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

Vote: Councilmembers Baker, Dhakal, del Aguila, 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.

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VOTE:

Ayes – 7

Nays – 0

ABSENT DURING VOTE: 0

ABSENT DURING MEETING: 0

9. 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 October 6, 2020 work session was adjourned at 9:27 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: October 27, 2020.