TOWN OF Herndon VIRGINIA

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HERNDON TOWN COUNCIL
Tuesday
December 8, 2020

Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; 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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments, Mayor Merkel stated that the December 8, 2020 Herndon Town Council Public Hearing would be by electronic means.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, December 3, 2020. In attendance electronically were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Jennifer Baker; Cesar del Aguila; Pradip Dhakal; Signe Friedrichs; and Bill McKenna.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Jennie Tripoli, Director of Finance; Lisa Gilleran, Director of Community Development; Michael Wallick, Transportation Planner; David Stromberg, Zoning Administrator; and Amanda M. Kertz, Chief Deputy Town Clerk.

Announcements

Amanda M. Kertz, Chief Deputy Town Clerk, welcomed those listening to the December 8, 2020 Town Council public hearing 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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments.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 & Determination of Quorum

Mayor Merkel called the public hearing by electronic means to order at 7:00 p.m. and asked Ms. Kertz 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. All members were present electronically, with Mayor Merkel presiding. As Ms. Kertz had stated, the meeting that evening was being conducted pursuant to the appropriate laws associated with the COVID-19 pandemic disaster.

Announcement

Mayor Merkel stated that night's public hearing was the Council's last meeting before the holidays, the last public hearing of the year, and her last public hearing with her colleagues on Council. On behalf of the Council, she extended her personal wishes to all for a safe, socially distanced, and happy Holiday Season.

APPROVAL OF MINUTES

Vote on November 10, 2020
Work Session Minutes

On motion of Councilmember Friedrichs, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the minutes of the

November 10, 2020 work session were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Vote on November 17, 2020
Public Hearing Minutes

On motion of Councilmember Dhakal, seconded by Councilmember McKenna, and carried by unanimous roll call vote by electronic means, the minutes of the November 17, 2020 public hearing were approved. The vote was: Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Vote on December 1, 2020
Work Session Minutes

On motion of Councilmember Baker, seconded by Councilmember McKenna, and carried by unanimous roll call vote by electronic means, the minutes of the December 1, 2020 work session were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

2. COMMENTS FROM THE TOWN MANAGER

Mayor Merkel recognized William H. Ashton II, Town Manager, for comments followed by questions of Council.

Mr. Ashton provided commentary about the pandemic both countywide and regionally. He stated the Fairfax County caseload was continuing to rise, and all numbers—including percent positivity—were trending in the wrong direction. Fairfax County Health encouraged everyone to continue what they had been doing. They were attributing rising numbers to holiday travel, gatherings, and COVID-fatigue leading to less discipline with mask-wearing and social distancing.

A vaccine update on the Pfizer vaccine being looked at by the FDA for emergency-use authorization was provided, and Mr. Ashton stated shipping had started. Moderna's vaccine would be reviewed later that week for emergency-use authorization as well. He explained that Phase One of the COVID-19 vaccine distribution would include hospitals, healthcare workers, and long-term care facilities. The next phase would include essential personnel, public safety, and emergency response personnel. Phase Two would include the general population, most likely in the second quarter of 2021.

Dr. Gloria Addo-Ayensu, Fairfax County Health Department, asked the town to help communicate the safety of the vaccine and to continue messaging about social

distancing and staying home while sick. As vaccine distribution was discussed, Mr. Ashton stated he would make sure Herndon was well-represented. Additionally, he shared that the town was able to receive approximately $50,000 from Fairfax County for need-based water bill delinquencies.

Mr. Ashton also provided an update on staff's work toward solidifying policies for Council to address workforce and affordable housing. He stated educational opportunities for himself to learn more about Council's wants and for Council to learn more about what was at their disposal under state law were the first thing being looked at. He thanked Lesa Yeatts, Town Attorney, for her hard work on putting this together. He stated they created a panel of subject matter experts who would be available on January 5, 2021 at 10:00 a.m. for a Webex with Council. The event would be recorded for those unable to attend at that time. It would be a public meeting which would be advertised accordingly. Those on the panel had a lot of experience at the state level.

He stated this was the first of several things staff could provide Council to help solidify their housing objectives from a policy perspective with a policy statement. Mr. Ashton also suggested a baseline study for an understanding of what the current housing stock was to identify policy and goals which would help Council determine policy. With better understanding they could direct policy and how they would address this.

Mr. Ashton also stated there were some vacancies on town staff that needed to be filled and Human Resources worked with the Communications Department to create a Town of Herndon recruitment video. Due to technical difficulties when trying to present this video to Council, Mr. Ashton stated he would send them the video. He thanked Tanya Kendrick, Director of Human Resources, HCTV, and staff for their work on an exceptional video.

He also thanked this Council for their work and wished outgoing members well in their post-Council lives.

Questions from Council

Responding to Councilmember Friedrichs' queries concerning the distribution of vaccines in Phase One, Mr. Ashton stated that Phase One was divided into three sections with a focus first on long-term care facilities, then essential personnel, and then on people over 65 years old. Then, Phase Two would include the general population. This was his understanding after being on many calls. He stated he had a series of slides from Fairfax County Health Department that he could share with Council.

Councilmember Friedrichs also thanked Mr. Ashton and staff for putting together the panel on workforce and affordable housing. Mr. Ashton stated he knew there were holes

in his knowledge-base and this was a wonderful learning opportunity. He thought it would be a productive session to understand the whole picture for policy and questions to leverage the tools available.

Councilmember del Aguila voiced frustration with the time it had taken to get this panel together. Mr. Ashton stated that in 2019 staff started off by working with the Fairfax County Housing Authority and thought they would be the best way to effectuate this. He stated it became apparent the Housing Authority was not the right way to go for what Council wanted and that was when they decided to go in this direction.

3. COMMENTS FROM THE TOWN COUNCIL

Councilmember Dhakal: Wished those listening Happy Holidays and asked that they please enjoy in a socially distant way. He also congratulated all of Council, Mayor Merkel, and Councilmembers Baker and McKenna, on their service and thanked them for their work for the town. He thanked Mr. Ashton for bringing the housing panel to Council in January and stated he had conversations with Ms. Yeatts and Mr. Ashton about workforce and affordable housing. He stated one of the reasons Council could not influence the applicants is was because they do not have a policy statement crafted for this issue. He would like this to be a future agenda item and asked that staff research this topic and work on this. He stated a policy statement would help them influence and allow staff to refer applicants to their policy statement. He was glad they were talking about housing and that Council was willing to tackle the issue.

Councilmember Friedrichs: Thanked outgoing Council for being such great colleagues and provided comments about their sacrifice and time spent studying and learning. She stated it had not gone unnoticed. She also thanked Mayor Merkel and Councilmember Baker for volunteering with the golf tournament for Council for the Arts of Herndon for so many years. She stated they both continue to support the arts in the community, and she was grateful for the work they had done. She also stated she deeply appreciated Councilmember McKenna's work with the community's children and veterans. She stated she knew the outgoing Councilmembers had even better things ahead.

Councilmember Baker: Thanked the citizens for entrusting her to represent the town for six and a half years. She stated it was an honor to give her time and energy to her adopted hometown and thanked her friends and neighbors for their kind messages. She stated she was very thankful for the leadership of Bill Ashton, Lesa Yeatts, Chief Maggie DeBoard, and all town staff for taking great care of Council, residents, and businesses. She also thanked the clerk's office for their work with all of Council and for the proclamation about her time on Council. She briefly reviewed some of the information included in the proclamation, demonstrating the projects and initiatives she was part of

such as Herndon Metro, Downtown redevelopment, W&OD trail lighting, the adoption of the town's Historic District Overlay Guidelines, and adding Veterans Day as a town holiday.

Ms. Baker also stated she was an active member with the Virginia Municipal League and was grateful for the opportunity to be an informal international ambassador for Herndon, when she met with the Mayor of Runnymede, England at the 800th anniversary of the sealing of the Magna Carter in 2015; and when she joined the Herndon High School Band in representing the United States at the 75th anniversary of D-Day in Normandy, France in 2019. She also described three themes in her personal and professional life which were: fairness, community, and growth. She stated there were many things she would miss, but she was happy new people were taking the reins because that was important too. She wished all the best to her colleagues, Mayor-Elect Olem, and the new members of Council. She stated she would continue to be an active and positive member of the community.

Councilmember McKenna: Expressed that he wanted to thank a lot of people. He began with the Herndon Youth Advisory Council (HYAC) which was started in 2017 because the Constitution doesn't mention local government, despite the huge role it plays, and he wanted a forum for people to learn and to teach critical thinking. He thanked Council and Councilmember Dhakal and Mayor Merkel specifically for attending HYAC meetings. He provided comments about learning from the HYAC and about working with Growing Kids Therapy Center which led to major improvements in understanding for how police should work with people who have autism.

Mr. McKenna thanked elected federal, state, and county leadership for their work on items important to Council and congressional and senate leadership for making Northern Virginia one of the best places to live in the United States.

Mr. McKenna echoed Councilmember Baker's thanks to town staff, and he stated their work shows their character and what great people they have working on their behalf. He thanked department heads for managing personnel, budgets, and matters important to Council and those on boards and commissions whose work and vision make Herndon a destination and hometown for everybody. He thanked the clerk's office for reminders, follow-ups, and friendship.

He stated Town Attorney, Lesa Yeatts was professional, passionate, knowledgeable, and one of the best attorneys he had ever worked with. He stated Town Manager, Bill Ashton helped physically put jersey walls up for restaurants to be able to reopen sooner during the pandemic, and he stated his greatest vote cast was voting for Mr. Ashton to be Town Manager because of what he has done.

He thanked Council for their hard work on the budget, modifications to the Historic District, and downtown. He wished Mayor-Elect Olem all the luck in the world, and thanked Mayor Merkel. He stated he had the most votes against Mayor Merkel, with them disagreeing nine times, but she never took it personally and they both know they were doing what they thought was best for the town. He stated she was one of his best friends and thanked her for friendship and support.

Finally, he wanted to thank former Chair of the Planning Commission, Acting Chair of the Fairfax County Housing Authority, and 2019 Lady Fairfax ~ his wife, Melissa ~ for being kind, thoughtful, patient, and loving. They were married on February 2, 2020. He shared that his decision not to run for Council was based on his priorities being his wife, step-kids, and work for the Department of Homeland Security. He hoped he was remembered well for his time on Council as someone who did not back down from a challenge or fight.

Vice Mayor Olem: Extended Happy Birthday wishes to her neighbor Chris Smith's father who turned 100 years old. She stated he joined the armed services in 1939, fought in World War II, and spent time working for the CIA. Several local current and former elected officials also attended his birthday celebration.

Vice Mayor Olem echoed her colleagues' comments about Mayor Merkel, and Councilmembers Baker and McKenna. She shared comments about her time on Council with Mayor Merkel and the projects they completed together such as the new Herndon Fire Station which took seven years, improved walking paths and trails, and the re-finalizing of Downtown. She stated these were all projects they were working on since they got on Council and the things happening right now were items they worked on for many years. She echoed Councilmember Baker's comments about the W&OD trail lighting and the Historic District Overlay Guidelines and provided comments about Mr. Ashton and Ms. Yeatts' help.

Vice Mayor Olem shared things she would miss about both Councilmembers McKenna and Baker and told Mayor Merkel she hoped she would enjoy her time with her children.

Vice Mayor Olem wished Happy Holidays to all those listening and shared that she was finally getting the daughter she had always wanted.

Councilmember del Aguila: Stated he supported all the outgoing Councilmembers when they came on, and he wanted to share words Senator Mark Warner gave him. He said you do the best you can and everyone that serves here does that and it's never perfect. He quoted, "a third of the people have always loved you, a third of the people will always hate you, and a third just want you to get things done." He shared thanks for their focus on getting things done and stated it was a privilege to work with them.

Mayor Merkel: Indicated she would like to make her comments at the end of the meeting. Her comments are included at the end of the minutes.

COMMENTS & DISCLOSURES FOR THE RECORD

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

4. COMMENTS FROM THE AUDIENCE

Mayor Merkel outlined the participation process for Webex. She stated that Council would use a speakers list to call on those who have registered to provide "Comments from the Audience" to address Council on any matter that was not listed as a public hearing item on that night's agenda. She would call on each person that signed up to speak and would also announce the name of the next speaker. She would then pause briefly while staff enabled the speaker's ability to address Council. Speakers would have up to three minutes and should state their name and address for the record. Comments from the Audience were limited to 45 minutes or approximately 15 speakers.

Mayor Merkel stated that a timer would appear on the Webex screen and encouraged speakers to wrap up when there were 30 seconds left on the timer. She then called on the following individual, who provided comments:

- Jay Hadlock, 515 Alabama Drive, Herndon: Provided comments on the amendments to the Comprehensive Downtown Redevelopment agreement and conditions of the agreement with Comstock. Mr. Hadlock provided a written copy of his comments for the record, which are on file in the Town Clerk's office.

- Dorian Araneda, 630 Jefferson Street, Herndon: Provided comments on his request for a potential special exception for his home-based virtual IT business. Mayor Merkel asked the Clerk's office to reach out to connect him with appropriate staff.

- Bryce Cumbie was on the speakers list for the evening but was not on the Webex at the time of Comments from the Audience. Mayor Merkel asked the Clerk's office to reach out to them to see if they had comments to share with the Council.

PRESENTATION

5. **Presentation of the Town's Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended June 30, 2020 (by Brown Edwards and Company, LLP, Certified Public Accountants).**

Mayor Merkel introduced Matthew Heatwole, Brown Edwards and Company, LLP, Certified Public Accountants, to present this year's CAFR.
Mr. Heatwole provided information about the FY 2020 audit and presented the PowerPoint entitled "Town of Herndon, Virginia Financial Analysis June 30, 2020," which is on file in the town clerk's office. The presentation gave a financial overview of the following items: level and change of net position, level of budgetary fund balance, assets to liabilities, ratio of assets to obligations, capital asset condition, debt service load, bonded debt per capita, other local taxes growth, full value per capita, business-type activities self-sufficiency, employee to population ratio, and per capita ratios.

Jennie Tripoli, Director of Finance thanked the firm for their work and collaboration navigating through a virtual audit, and Mayor Merkel echoed thanks to the firm.

Councilmember del Aguila stated he liked to hear the positives, but a summary of exposures would be helpful. He asked, for next year, what the auditors were seeing from a trend perspective.

Responding to Councilmember del Aguila's queries, Ms. Tripoli stated the audit was based on the past year and trends were still being worked on with the budget process. Each passing month provided more data. Once in the budget cycle, she stated they could discuss more of the exposures and where the town was to-date. She mentioned some of the lagged data such as BPOL. She stated excise taxes could take a hit in the winter and CARES Act funding and other special leave might be expiring. Those changes could impact things like sales tax. She said there was much to discuss with the upcoming budget cycle while not knowing how long pandemic effects on revenue would last. She said the audit would not necessarily touch on this.

Councilmember del Aguila restated he would like future CAFRs to mention exposures.

PUBLIC HEARINGS

6. **Resolution 20-G-56, to consider Special Exception SE #20-02, 900 Ballou Street, to permit a secondary kitchen in a single-family residence in an R-15, Residential Single-Family District. Fairfax County Tax Map Reference Number: 0104 05 0035B. Applicant: Mohan Uprety. Property Owners: Mohan K. Uprety and Laxmi P. Uprety.**

December 8, 2020
(public hearing)

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said general item had been duly advertised in the Friday, November 20, and the Wednesday, November 25, 2020 issues.

Mayor Merkel recognized Michael Wallick, Transportation Planner, for the staff report. She stated that Elizabeth Gilleran, Director of Community Development, and David Stromberg, Zoning Administrator, were also available for questions.

Mr. Wallick presented the staff report and PowerPoint dated December 8, 2020 which are on file in the Town Clerk's office. The proposed resolution would permit a secondary kitchen within a new residence. He reviewed the location on both the Zoning Map and the 2030 Comprehensive Plan Map and went over the existing dwelling and the accessory food preparatory area types. Mr. Wallick presented the proposed changes for the single-family dwelling. Staff recommended approval of this resolution with the proposed conditions, as presented.

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

Responding to queries from Councilmember Friedrichs, Mr. Wallick confirmed that the proposed special exception (SE) applied to the secondary kitchen. Staff was recommending approval of the SE with the conditions before Council.

Mayor Merkel asked about transferability of the exception not going to a new owner. Mr. Wallick stated that for the owner of the home this meant the secondary kitchen would need to be removed or converted to a permissible use, such as a wet bar, if the owner sold.

Councilmember del Aguila asked if the new owner could request the same special exception, and Mr. Wallick stated that was his understanding.

Councilmember Dhakal wanted to reiterate, for the record, that when it came to the kitchen it was the oven, 240-volt outlet, and sink with more than one-and-a-half-inch opening and removing those things was what would be necessary if the property was sold. Mr. Wallick confirmed that would make it go back to a wet bar use.

Mayor Merkel recognized Mohan Uprety, Applicant, for comments.

- Mr. Uprety stated he had no comments or questions and thanked everyone.

Mayor Merkel confirmed with Ms. Kertz that there were no speakers on this item.

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

Councilmember Friedrichs moved approval of Resolution 20-G-56 as presented, and Councilmember Dhakal seconded the motion.

There were brief comments from Council.

Mayor Merkel stated she had missed Vice Mayor Olem's question during the question period, and she asked the Parliamentarian, Ms. Yeatts, if Vice Mayor Olem could ask those questions at that time.

Ms. Yeatts stated they were in discussion, but if Council concurred, the applicant could be elevated to a speaker positions so Vice Mayor Olem could ask her questions.

With concurrence of Council, the applicant was made available to hear Vice Mayor Olem's questions which were whether the applicant currently lived in the home, and if they knew that non-family members could not rent the space as an apartment.

Mr. Uprety stated that he was not living in the house at the time, but once the new structure was complete, he was planning to make this his primary dwelling unit. He stated that would not violate any rules or regulations of the town.

Councilmember del Aguila stated he would support this and provided brief personal comments.

The question was called on the motion, which carried by unanimous roll call vote by electronic means. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Resolution 20-G-56, to consider Special Exception Application SE #20-02, to permit a second kitchen on a property where a new single-family dwelling is proposed and located within the R-15 Zoning District.

WHEREAS, the applicant, Mohan Uprety, has submitted a request for a special exception to permit a second kitchen within a new single-family residence on a property located at 900 Ballou Street and identified as Fairfax County Tax Map # 0104 05 0035B; and

WHEREAS, the Planning Commission has reviewed this application and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code; and

December 8, 2020
(public hearing)

WHEREAS, following the public hearing, the Planning Commission recommended that the application be approved with conditions based upon the finding that the proposed second kitchen meets the purpose and intent of the Zoning Ordinance, in particular Section 78-155.3; and

WHEREAS, the Town Council has conducted a public hearing and has reviewed the Planning Commission recommendations.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby approves Special Exception Application SE #20-02, in accordance with the conditions set forth below to achieve compliance with the standards found in Sections 78-80.4(b) and 78-155.3:

1. Substantial Conformance. The development of the special exception use described in Condition 2 below including the internal layout of the proposed structure regarding dual kitchens and wet bars shall be in substantial conformance with the architectural plans submitted with this application and dated October 1, 2020. Approval of this application on the parcel identified as Fairfax County Tax Map Number 0104-05-0035B, known as 900 Ballou Street, Herndon, Virginia (the "Property"), shall not relieve the applicant or the owners of the Property, or their successors or parties developing, establishing, or operating the approved special exception, from the obligation to comply with and conform to any other Zoning Ordinance, codified ordinance, or regulatory requirement.

2. Permitted Use. This special exception is granted to allow a secondary kitchen in the new single-family dwelling proposed on the Property in accordance with TP #20-04 and pursuant to Section 78-80.4(b) of the Town of Herndon Zoning Ordinance (the "Zoning Ordinance"). It is not the intent of this approval to authorize a second kitchen in the existing structure located at 900 Ballou Street.

3. These conditions must be recorded by the applicant among the land records of Fairfax County for the Property prior to the issuance of the building permit for the new single-family dwelling. A certified copy of the recorded conditions shall be provided to the Zoning Administrator.

4. Access. No portion of the house shall be separated or partitioned from other areas of the house through the use of keyed locks, deadbolts or other locking mechanisms or drywall or other partitions to form a separate dwelling unit.

5. Family. The inhabitants of the new single-family dwelling on the Property shall consist of one family as defined by Section 78-180 of the Zoning Ordinance.

6. Inspection. The premises shall be made available for inspection by authorized representatives of the town upon reasonable notice.

7. Transferability. This special exception does not run with the land and is not transferable to a future owner or to a different parcel. The secondary kitchen shall be removed or converted to a use permitted by the Zoning Ordinance prior to the sale of the property.

8. Revocation. Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h) of the Zoning Ordinance. Revocation of this special exception shall require immediate removal of the secondary kitchen inclusive of all kitchen appliances, associated electrical outlets, plumbing, cabinetry and counters.

This resolution by its terms shall be effective on and after the date of its adoption.

7. **Resolution 20-G-57, to consider Special Exception SE #20-06, 652 Stuart Court, to permit a second kitchen/accessory dwelling unit in a single-family residence in an R-10, Residential Single-Family District. Fairfax County Tax Map Number: 0162 18100017. Applicant: Daniel P Brooks. Property Owners: Daniel P Brooks and Chris Mason Palmer.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, November 20, and the Wednesday, November 25, 2020 issues.

Mayor Merkel recognized Michael Wallick, Transportation Planner, for the staff report.

December 8, 2020
(public hearing)

Mr. Wallick presented the staff report and PowerPoint, dated December 8, 2020, which are on file in the Town Clerk's office. This application would allow a special exception to permit an accessory dwelling unit (ADU), to include a secondary kitchen, in an existing residential single-family dwelling. He reviewed the background, location, and the applicant's proposed revisions. Staff found that the proposed ADU complied with the size and room limitations required by the zoning ordinance. Both property owners (applicants) meet the age requirements and one would occupy the primary dwelling unit while the other would occupy the accessory dwelling unit located on the ground level.

The zoning ordinance allows for flexibility for instances like this, when specific household circumstances create a need for an accessory dwelling unit and second kitchen for a member of the household to age in place. Based on the application, which was submitted and reviewed for compliance with the aforementioned town code sections, staff believes this proposal complies with the town's zoning ordinance.

At its meeting on November 16, 2020, the Planning Commission reviewed and recommended approval of the proposed SE #20-06. Staff also recommended approval in accordance with the conditions that were presented.

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

Responding to queries from Councilmember Friedrichs, Mr. Wallick confirmed this item slightly differed from the previous item because they were discussing an ADU.

Mayor Merkel recognized Daniel Brooks, Applicant, for comments.

- Mr. Brooks stated it was a legitimate need for his partner to have independent space. He stated this process had been very difficult, and Council may want to address it. He stated it took him 14 weeks to get to this point. He stated the conditions need to be looked at, referenced how he would need to remove the accessory dwelling unit if he sold, expressed concerns over the process, and asked Council to look at this in the future.

Councilmember del Aguila thanked Mr. Brooks for his comments and stated Council was committed to looking at housing (including workforce and age-in-place housing). He reminded the applicant of his name and stated Council would address this.

Mayor Merkel confirmed with Ms. Kertz that there were no speakers on this item.

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

December 8, 2020
(public hearing)

Councilmember Dhakal moved approval of Resolution 20-G-57, as presented and Councilmember del Aguila seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote by electronic means. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Resolution 20-G-57, to consider Special Exception Application SE #20-06, to permit an accessory dwelling unit, to include a secondary kitchen, in an existing single-family dwelling within the R-10 Zoning District.

WHEREAS, the applicant, Daniel Brooks, has submitted a request for a special exception to permit an accessory dwelling unit and secondary kitchen within an existing residence on a property located at 652 Stuart Court and identified as Fairfax County Tax Map # 0162 18100017; and

WHEREAS, the Planning Commission has reviewed this application and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code; and

WHEREAS, following the public hearing, the Planning Commission recommended that the application be approved with conditions based upon the finding that the proposed accessory dwelling unit meets the purpose and intent of the Zoning Ordinance, in particular Section 78-155.3; and

WHEREAS, the Town Council has conducted a public hearing and has reviewed the Planning Commission recommendations.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby approves Special Exception Application SE #20-06, in accordance with the conditions set forth below to achieve compliance with the standards found in Sections 78-80.4(a), 78-80.4(b) and 78-155.3:

1. Substantial Conformity. The development and maintenance of the special exception use described in Condition 2 below shall be in substantial conformance with the SE #20-06 application materials submitted September 16, 2020. Approval of this application on the parcel identified as Fairfax County Tax Map Number 0162-18-100017, known as 652 Stuart Court, Herndon, Virginia (the "Property"), shall not relieve the applicant or the owners of the

Property, or their successors or parties developing, establishing, or operating the approved special exception, from the obligation to comply with and conform to any other Zoning Ordinance, codified ordinance, or regulatory requirement.

2. Permitted Use. This special exception is granted to allow an accessory dwelling unit in an existing single-family dwelling on the Property pursuant to Section 78-80.4(a) of the Town of Herndon Zoning Ordinance (the "Zoning Ordinance").

3. These conditions must be recorded by the applicant among the land records of Fairfax County for the Property prior to the issuance of the occupancy permit for the accessory dwelling unit. A certified copy of the recorded conditions shall be provided to the Zoning Administrator.

4. Compliance with Building and Zoning Standards. The accessory dwelling unit shall comply with all applicable building and development standards for dwelling units in the zoning district in which the accessory dwelling unit will be located.

5. One Accessory Dwelling Unit per Lot. There shall be no more than one accessory dwelling unit on the Property in addition to the principal dwelling.

6. Size Limit. The floor area of the accessory dwelling unit shall not exceed 490 square feet.

7. Limit on Bedrooms and Occupancy. The accessory dwelling unit shall not contain more than one bedroom or be occupied by more than two persons.

8. Occupancy Standards. The accessory dwelling unit shall be subject to the dwelling unit occupancy standards of section 78-170.6. Pursuant to Section 78-80.4(a)(8) of the Zoning Ordinance, either the accessory dwelling unit or the principal dwelling shall be occupied by the owner of the principal dwelling. Additionally, either the accessory dwelling unit or the principal dwelling on a property shall be occupied by at least one person who meets the following qualifications:

   a. The person is at least 62 years of age; or

b. The person has a physical, mental, or cognitive disability:

1. As certified by the Social Security Administration, the Veterans Administration, or the Railroad Retirement Board; or

2. As confirmed in writing signed by a licensed medical practitioner or a practitioner licensed in an allied health field.

3. This section shall not be deemed to exclude individuals who meet the qualifications above and are able to seek or engage in employment.

9. Parking. There shall be a minimum of one off-street parking space with convenient access to the street for the accessory dwelling unit. The parking shall be in addition to the two parking spaces required for the principal dwelling.

10. Not to be Sold Separately. The accessory dwelling unit shall not be sold apart from the principal dwelling upon the same lot.

11. Compliance with Health, Safety, Sanitation and Building Code Regulations. The accessory dwelling unit shall meet the applicable code regulations for building, safety, health, and sanitation standards. During reasonable hours, the applicant shall make provisions to allow officials to make the appropriate inspections.

12. Zoning Inspection Permit and Inspections. A Zoning Inspection Permit for the accessory dwelling unit is required prior to issuance of the occupancy permit. Following occupancy, the accessory dwelling unit shall be inspected annually by zoning and building officials during reasonable hours and upon prior notice.

13. Approval linked to Property Owner, Not Land. This Special Exception shall not run with the land and shall terminate by either a change in substantial ownership or possession of the Property, a discontinuation of the use for which the Special Exception was granted for a continuous six month period, a failure to obtain a Zoning Inspection Permit for the use for which the Special Exception was granted within eighteen months from the date of approval of the Special Exception, or at any time the use does not comply with any of the conditions of the approved Special Exception.

14. Change in Ownership. The owner shall remove the secondary kitchen, as defined in the zoning ordinance at the time of approval of this Special Exception from the accessory dwelling unit and the zoning administrator shall be notified at least thirty days prior to the sale or transfer of the property. Upon the sale of transfer of the property, the property owners shall permit the inspection of the accessory dwelling unit by zoning and building officials within fifteen days to ensure compliance with the conditions of the Special Exception.

15. Revocation. Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h) of the Zoning Ordinance. Revocation of this special exception shall require immediate removal of the food preparation area, as defined in the zoning ordinance at the time of approval of this Special Exception from the accessory dwelling unit.

This resolution by its terms shall be effective on and after the date of its adoption.

8. Ordinance 20-O-63, to amend the Fiscal Year (FY) 2021 Adopted Budget which, if adopted by Town Council, will amend the budgets of the General Fund and Downtown Parking Fund.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Wednesday, November 25, 2020 issue.

Mayor Merkel recognized Jennie Tripoli, Director of Finance, for the staff report.

Ms. Tripoli presented the staff report dated December 8, 2020, which is on file in the Town Clerk's office. The proposed ordinance was the second budget amendment for FY 2021 totaling approximately $3 million. The largest item was $2.8 million for the Downtown Parking Fund related to the amended comprehensive agreement between the town and Comstock. Funds from insurance recoveries and off-cycle grants were included as well. Staff was also requesting to use some of the surplus from FY 2020 (not related to CARES act funding) to help fund the mandatory Cisco telephone upgrade and popular Fall Clean Up. Staff recommended approval of the proposed resolution, as presented.

There was no discussion amongst Council and staff on this item.

Mayor Merkel confirmed with Ms. Kertz that there were no speakers on this item.

December 8, 2020
(public hearing)

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

Councilmember McKenna moved approval of Ordinance 20-O-63, as presented, and Mayor Merkel seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote by electronic means. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Ordinance 20-O-63, to consider amending the Fiscal Year (FY) 2021 Adopted Budget, which, if adopted, will amend the budgets of the General Fund and Downtown Parking Fund.

Recital

In adopting this ordinance, the Town Council has considered the Town Manager's recommended budget modifications as described in Attachment A, FY 2021 Budget Amendment Number 2.

BE IT ORDAINED by the Council of the Town of Herndon, Virginia, that the financial adjustments to the FY 2021 budget, as described in Attachment A, FY 2021 Budget Amendment Number 2 to this ordinance, are hereby approved. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is Attachment A.]

December 8, 2020
(public hearing)

TOWN OF HERNDON, VA
FY 2021

BUDGET AMENDMENT NUMBER 2

The following appropriations and revenue sources are proposed for amendment:

GENERAL FUND

Expenditure Appropriations:	
Increase General Fund Expenditures:	
Public Works	$ 106,011
Information Technology	46,193
Non-Departmental	33,251
Community Development	250
Total	$ 185,705
Revenue Budgets:	
Increase State Grant Revenues	$ 10,145
Increase Proceeds from Sale of Surplus Equipment	65,000
Increase Insurance Recoveries	20,467
Increase Use of Unassigned Fund Balance	89,843
Increase Not Otherwise Classified	250
Total	$ 185,705

DOWNTOWN PARKING FUND

Expense Appropriations:	
Increase Downtown Redevelopment Expenses	$ 2,800,000
Revenue Budget:	
Increase Other Financing Sources	$ 2,800,000

GENERAL

9. **Resolution 20-G-59, Establishing the Town of Herndon's 2021 Legislative Program to advise the 2021 Virginia General Assembly on matters of legislative interest on which the Town takes a position.**

Mayor Merkel recognized Lesa Yeatts, Town Attorney for the staff report.

Ms. Yeatts presented the staff report dated December 8, 2020, which is on file in the Town Clerk's office. The resolution would include the proposed legislative program for the town for the 2021 General Assembly Session. She explained how this had been an unusual year for many reasons, including the General Assembly's legislative action and conduct. She discussed the two sessions held in 2020, including a Special Session that started in August and lasted for nearly three months. She stated they were now only a few weeks away from the 2021 Session, which would take place mostly virtually. There was an almost historic limit on the number of bills that could be presented, which was set at seven for delegates and 12 for senators. She stated the early solicitation of requests had not been possible that fall, and staff brought a proposed program that was presented at the work session the past week. She stated there was a clear interest in further fleshing out the town's positions on housing and the historic district. She stated she took the chance to submit another option for Council's consideration. Version A was the program discussed at the work session. Version B had three enhanced positions regarding housing, land use, and duty to disclose the historic district in sales transactions. Staff recommended approval of the proposed legislative program Version A or Version B, as presented.

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

Responding to Councilmember Friedrichs' queries about housing solutions, Ms. Yeatts identified specific sentences and language which addressed those concerns brought up during the work session. Responding to further queries, Ms. Yeatts stated that the discussions Mr. Ashton referenced in his comments earlier that evening would help Council and staff know what was permitted. She stated there were two situations that control conditional land use. One situation were things that the General Assembly could change, and one situation pertained to things that they cannot change—case law. Case law would exist despite what the General Assembly might do, and several cases would prohibit things Council had discussed.

Vice Mayor Olem moved approval of Resolution 20-G-59 Version B, as presented, and Councilmember Dhakal seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote by electronic means. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Resolution 20-G-59, Establishing the Town of Herndon's 2021 Legislative Program to advise the 2021 Virginia General Assembly on matters of legislative interest on which the Town takes a position.

The Town generally supports the positions of the Virginia Municipal League (VML) relative to issues and legislation affecting local governments.

Additionally, the Town Council would be advising the 2021 General Assembly of the following positions without seeking any specific legislation:

Housing Solutions

The Town supports housing solutions and believes that affordable and workforce housing are essential to family stability, optimum educational and health outcomes and community and personal economic competitiveness. Local governments are key to solving the housing crisis in the Commonwealth. The Town supports allowing local governments the authority to use flexible tools for achieving housing goals and greater land use authority for creative housing types. The Town supports legislation that expands local land use authority and state funding for affordable, work force and other housing options.

Proffers and Zoning Authority

The Town supports the premise that the state code should extend to all localities full authority for conditional zoning to meet the needs of its current and new citizens for housing and public infrastructure.

The Town opposes any effort to limit localities' control of their land use decisions. State code provisions regarding zoning authority should continue to ensure that local governments have a full range of authority.

The Town opposes any legislation that would pre-empt a locality's power to make such decisions or impose processes that weaken planning and land use functions. Coordination of local land use planning and transportation planning improves the ability of all levels of government to deal with and manage growth-related issues.

December 8, 2020
(public hearing)

Duty to Disclose Historic District

The Town supports amendment of the Code of Virginia to establish an affirmative duty for disclosure to buyers that a property is located in a historic district.

https://law.lis.virginia.gov/vacode/title55.1/chapter7/section55.1-703/

COVID-19 – Addressing Short and Long Term Needs

The Town supports:

- Increased state and federal funding and technical support to allow for robust and timely COVID-19 testing and contact tracing services throughout the Commonwealth.
- Creation of a state stockpile of personal protection equipment (PPE) to ensure that essential workers – including those in public safety, human services, transit, and public schools – get access to sufficient PPE on a timely basis.
- State funding for public health emergency services functions to enable the state and its local health departments and stakeholders to better prepare for and respond to public health emergencies such as a pandemic.
- Increased state funding for public health information technology resources and staff so that critical, timely information about public health emergencies is made available to state and local policy makers, first responders, and the public.
- Additional funding and programming to prevent evictions resulting from people battling the COVID-19 pandemic or economic hardship from job layoffs or reduced work hours.
- Additional funding to help households with extreme medical needs or financial insecurities because of the ailing economy make payments for utility services.
- Additional funding for local governments to work with local businesses to develop and implement strategies necessary to implement public health standards and combat the Coronavirus.
- Additional funding for local governments to keep public buildings and facilities both safe and free from the coronavirus.
- State efforts to persuade Congress to enact new legislation providing financial assistance to local governments and to individuals. Such assistance to localities

should permit local governing bodies to replace lost local revenues with the additional federal money until the economic recovery takes hold.

Economic Development

The Town supports local flexibility to promote economic development as localities come out of this pandemic. A changed business landscape will necessitate a review of revenue sources to localities along with new ideas and actions that will broaden and diversify local revenue streams. Retention of current businesses is vital, and we support continued grant funding and common-sense restrictions for current businesses that are both efficient and effective.

FOIA

The Town supports the position that any proposed changes to the Freedom of Information Act legislation be sent to the FOIA Council for analysis and recommendations prior to General Assembly consideration or enactment.

Funding for Planning District Commissions

The Town supports increased state funding for the statewide network of planning district commissions/regional councils (PDCs). PDCs carry out efforts supported by state and local policy makers to advance and sustain regional coordination, cooperation, and technical assistance for the benefit of regions across the Commonwealth.

Land Use Control

The Town believes that localities must maintain control of local land use decisions. Neither the state nor the federal government should usurp or pre-empt a locality's authority to make such decisions; nor should they impose requirements that weaken planning and land use functions. This would include the authority to promote affordable and mixed income housing as well as the required infrastructure to facilitate in-fill development, redevelopment and mixing of uses.

Sovereign Immunity

The Town supports the position of VML that the Virginia General Assembly should strengthen and maintain the principles of sovereign immunity for local governments and their officials.

The Town supports limiting the liability for civil damages for injury or death resulting from or related to actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the localities business operations unless

the government, or political subdivision failed to substantially comply with applicable COVID procedures established by the federal, state, or local agency which governs the business operations.

State Assistance to Local Police Departments (HB 599)

The Town supports state assistance to local police departments. Almost 70 percent of Virginians live in communities served by police departments. The state created a program of financial assistance to local police departments (HB 599) when it imposed an annexation moratorium on cities more than 30 years ago. It has increasingly de-emphasized this funding obligation as a priority but has never compromised on the annexation moratorium. The Town supports VML's position for the state to honor its commitment to local governments and public safety by funding the program as stipulated in the Code of Virginia.

Stormwater Local Assistance

The Town supports continued annual investment in the Stormwater Local Assistance Fund to assist localities with critical stormwater projects to comply with federal and state clean-water requirements.

Taxing, Licensing, and Regulating Internet-Based Businesses and Services

In taking state action to regulate private enterprises employing a business model that emphasizes the use of the Internet to either provide retailor facilities or ridesharing services, local government interests should be acknowledged, and localities should be included in the decision-making. The Town supports preservation of its ability to enter into voluntary collection agreements provided that such agreements include provisions to protect the public's interest.

Transportation Funding Assistance

The Town supports continued funding assistance and flexibility to continue local transportation programs and projects and the operation of public transit systems.

Utilities

The Town supports local autonomy regarding local utilities. Many local governments own and operate utilities that provide services that may include but are not limited to water, sewer, electric and natural gas. These utility services are funded by localities both outright and as enterprise funds. These utilities have bonding authority and financial restrictions on their operations. Localities must be able to manage revenues and expenditures related to these services without state interference.

Water Quality Funding

For continued successful local water quality improvement projects the Town supports the position that the state fully capitalize the Water Quality Improvement Fund and provide the necessary appropriations for local government water quality improvement projects to clean up the Chesapeake Bay and its tributaries. In addition, any changes to the state's stringent wastewater mandates imposed on localities must be scientifically land economically defensible, employing implementation strategies that produce any necessary wastewater improvements at the least cost.

10. **Resolution 20-G-64, to authorize the Chief of Police to sign a Northern Virginia Critical Incident Response Team (CIRT) Memorandum of Understanding, allowing the Herndon Police Department to participate in mutual aid response to working officer-involved critical incident investigations throughout the Northern Virginia region.**

Mayor Merkel recognized Chief Maggie DeBoard, Herndon Police Department (HPD), for the staff report.

Chief DeBoard presented the staff report dated December 8, 2020, which is on file in the Town Clerk's office. She reviewed the background for the development of a Critical Incident Response Team (CIRT) by the Northern Virginia Chiefs to provide for the independent and objective investigation of law enforcement officer-involved critical incidents. She provided an overview and stated the purpose of the CIRT was to ensure thorough and objective investigation of all critical incidents and promote public confidence by mitigating concerns about potential conflicts of interest.

Chief DeBoard stated this concept would be in line with current police reform demands that call for independent investigations of police use of force incidents and greater transparency of law enforcement actions. The NOVA Chiefs saw the value of this regional team in advance of the recent outcry for police reform.

Chief DeBoard stated that HPD was already dependent on an outside entity conducting officer-involved critical incidents due to size and limitations of investigative resources within the agency. In the past, those investigations had been conducted by the Fairfax County Police Department on request, with no formal MOU in place to guide protocols, and no guarantee of availability. By participating in the formal CIRT, all participating agencies would share investigative resources with outlined and agreed upon procedures that would guide these investigations across the region. Investigators and supervisors assigned to the CIRT would also gain valuable investigative experience and skills that could be applied to investigations they are assigned to work throughout the community.

The CIRT MOU was developed with input from law enforcement subject matter experts and chiefs, jurisdictional attorneys, and commonwealth attorneys in each of the participating jurisdictions. Jurisdictions in the region that were not currently participating would have the option of joining in the future. They had an expected start date of early Spring 2021.

Chief DeBoard noted that the City of Alexandria had pulled out temporarily, and Fairfax County had chosen not to participate. She felt comfortable with the number of jurisdictions and expertise currently on board.

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

Responding to questions from Councilmember Dhakal, Chief DeBoard stated she did not know why Loudoun County was not participating, and they expected to re-approach the new Chief of Fairfax County when new leadership was in place.

There was a brief question and answer session between Councilmember Friedrichs and Chief DeBoard about the number of critical incidents in the town and the costs associated with the CIRT MOU. Chief DeBoard stated she did not expect it to affect additional overtime requests at all.

Vice Mayor Olem moved approval of Resolution 20-G-64, as presented, and Councilmember Baker seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote by electronic means. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Resolution 20-G-64, to authorize the Chief of Police to sign a Northern Virginia Critical Incident Response Team (CIRT) Memorandum of Understanding allowing for the participation of the Herndon Police Department in mutual aid response to working officer-involved critical incident investigations throughout the Northern Virginia region.

WHEREAS, the NOVA CIRT is an independent group of trained investigators and supervisors that provide expert, objective investigation of critical incidents involving law enforcement officers, throughout the Northern Virginia region; and

WHEREAS, a Memorandum of Understanding has been developed to allow for the participation of local law enforcement departments in the investigation of working officer-involved critical incident investigations as defined by the MOU; and

WHEREAS, the participation of the Herndon Police Department will assist in promoting public confidence that an objective investigation will occur when an officer is involved in a critical incident, with the goal of mitigating concerns regarding potential conflicts of interest; and

WHEREAS, Herndon Police Department personnel assigned to the CIRT will gain valuable investigative skills and expertise that will assist them in their investigative duties within the Town of Herndon; and

WHEREAS, this agreement is established under the authority of the Code of Virginia 15.2-1726, Agreements for cooperating in furnishing police services, and 15.2-1736, Mutual aid agreements among governing bodies of localities.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby authorizes the Chief of Police to sign a Memorandum of Understanding for participation in the Northern Virginia Critical Incident Response Team.

[Note: Attached for reference is the Northern Virginia Critical Incident Response Team Memorandum of Understanding dated November 13, 2020.]

December 8, 2020
(public hearing)

NORTHERN VIRGINIA CRITICAL INCIDENT RESPONSE TEAM
MEMORANDUM OF UNDERSTANDING

I. AGREEMENT

A. This agreement is known as the Northern Virginia Critical Incident Response Team (CIRT) Memorandum of Understanding and is established under the authority of the Code of Virginia § 15.2-1726. *Agreements for consolidation of police departments or for cooperation in furnishing police services*, and § 15.2-1736. *Mutual aid agreements among governing bodies of localities*.

B. All critical incident investigations shall be conducted pursuant to the protocols outlined in this Memorandum of Understanding (MOU). This MOU shall be in effect for a term commencing on this 15th day of December 2020 and shall be extended and renewed for consecutive periods of five years if mutually agreed upon by the Parties to the MOU.

1. Any Chief Executive Officer (CEO), in a jurisdiction that is party to this agreement, may activate the CIRT upon the occurrence, within that CEO's jurisdiction, of any critical incident involving a law enforcement employee or a law enforcement officer suicide. Upon this activation, the matter will be investigated under the provisions of this MOU.

2. The CIRT will conduct the criminal investigation of a critical incident in close conjunction with the Commonwealth's Attorney or Prosecuting Attorney for the jurisdiction which had the critical incident. The internal administrative investigation remains the responsibility of the affected Agency.

3. CIRT will not investigate motor vehicle crashes resulting in the death of any person, unless the vehicle was used as deadly force.

C. Any party may terminate its participation in this MOU upon thirty (30) days written notice to the CIRT Board of Directors. This MOU is not intended to increase the civil or criminal liability of member agencies or their employees and it shall not be construed as creating any mandatory obligation to, or on behalf of, third parties.

II. PURPOSE

A. To promote public confidence that an objective investigation will occur when an officer is involved in a critical incident as defined by this MOU. This includes but is not limited to:

1. Intentional and accidental shootings.

2. Any action used by a sworn law enforcement officer which results in the death or a life-threatening injury of a person during the performance of the officer's duties.

3. Any In-Custody Death as defined by this MOU.

4. Police officer suicide.
5. CIRT will not investigate motor vehicle crashes resulting in the death of any person, unless the vehicle was used as deadly force.

B. To establish uniform procedures and mutually agreed-upon investigative guidelines that allow for an objective investigation of a critical incident with the goal of mitigating concerns regarding potential conflicts of interest should the affected agency investigate the incident itself.

C. To present the completed case investigation, and provide updates as the investigation proceeds, to the affected Commonwealth's Attorney, or designated prosecuting authority, who shall determine whether to initiate or decline prosecution ensuring persons are held accountable for their criminal conduct and those who have not engaged in criminal conduct are absolved.

D. The CIRT will not conduct internal administrative investigations.

III. DUTIES

A. Ensure a thorough and objective investigation of all critical incidents within the scope of CIRT responsibilities, in accordance with applicable laws, CIRT Standard Operating Procedure, and policies.

B. Ensure that proper investigative procedures are followed, evidence is collected and preserved, and reports are generated in a timely manner.

C. Supervisors assigned to CIRT and the internal affairs function of the affected law enforcement agency, will meet with the involved Officer(s) at the beginning of the criminal investigation to explain the investigative process.

D. Provide briefings and updates to the affected law enforcement agency, its liaison team, command staff, and the affected Commonwealth's Attorney, or designated prosecuting authority regarding the status of the investigation as needed or reasonably requested.

E. Ensure CIRT is solely a fact-finding body and shall present the facts of the investigation to the Commonwealth's Attorney, or designated prosecuting authority.

F. Refer the completed investigation to the affected Commonwealth's Attorney, or designated prosecuting authority, for review. The affected law enforcement agency shall be notified prior to the time the investigation is presented to the Commonwealth's Attorney, or designated prosecuting authority.

G. At the conclusion of the investigation, provide the completed investigation to the internal affairs function of the affected law enforcement agency.

H. Participate in any critical incident review meetings, as requested by the affected agency or Commonwealth's Attorney, or designated prosecuting authority.

I. All CIRT members will sign a confidentiality agreement upon assignment to the CIRT.

IV. ACTIVATION

A. Any Chief Executive Officer in a jurisdiction that is a party to this agreement may activate the CIRT upon the occurrence, within that CEO's jurisdiction, of any critical event as defined in II.A and Appendix A of this MOU involving a law enforcement employee which may have possible criminal liability attached or a law enforcement officer suicide. Upon activation, the matter will be investigated under the provisions of this MOU.

1. All requests for CIRT assistance shall be made to the CIRT Commander, or if unavailable, the CIRT Assistant Commander, who will then notify and direct the appropriate CIRT Supervisor(s) to coordinate the CIRT response to the incident.
2. CIRT members from the affected agency shall not participate in the CIRT critical incident investigation. However, they may be assigned as the affected agency's Liaison Officer.

V. PERSONNEL AND EQUIPMENT EXPENSE

A. In the event of a CIRT activation, member agencies agree to relieve team members assigned to the investigative team for the duration of the investigation.

B. Member agencies shall not be liable to each other regarding reimbursement for injuries to personnel or damage to equipment incurred when going to or returning from another jurisdiction.

C. Member agencies shall not be accountable to each other for the salaries or expenses of their personnel, vehicles and equipment used in association with, or arising out of, the rendering of assistance pursuant to this agreement.

D. The affected agency shall be responsible for all investigative expenditures and will provide all reasonable and necessary support, resources, equipment, and supplies as required by CIRT to conduct its investigation. Prior to incurring costs associated with obtaining specialized equipment or testing, the CIRT Commander, or designee, will attempt to identify if logistical support exists in the region and will consult with the Chief Executive Officer or designee of the affected agency.

VI. INTERNAL ADMINISTRATIVE INVESTIGATION

A. The affected agency's Internal Administrative Investigation will be conducted independent of the CIRT investigation.

B. The CIRT investigation will have priority over the affected agency's Internal Administrative Investigation.

C. Investigators from the internal affairs function of the affected agency assigned to conduct the Internal Administrative Investigation may remotely observe the criminal investigation interviews.

D. Investigators assigned to conduct the Internal Administrative Investigation will be provided access to the crime scene(s), in collaboration with the CIRT.

VII. CIRT STRUCTURE

A. Board of Directors

1. The Board of Directors for the Northern Virginia Critical Incident Response Team consists of the Chief Executive Officers from each of the member agencies that are a party to this MOU.
2. The main role of the Board of Directors is CIRT oversight, planning, guidance, and direction for the future.
3. The Board will appoint a CIRT commander for a two-year term. This term may be extended at the discretion of the Board of Directors.
4. Important matters shall be brought before the full board for a vote. The full board need not deliberate all matters, some may be delegated to subcommittees.
5. The Board of Directors, by majority, may elect to immediately stop an investigation and turn it over to the affected agency for willfully failing to abide by this agreement. Further action may also result in the agency's removal from the CIRT MOU.

B. CIRT Commander

1. Shall be a command level officer from a participating law enforcement agency and shall be appointed by the CIRT Board of Directors for a two-year term, regardless of agency assignment.
2. Shall provide an annual report to each member of the CIRT Board of Directors (TBD; e.g. February). The report will detail, at a minimum, CIRT investigations, training, and areas identified for further development or growth.
3. Shall clearly outline the goals, objectives and expectations of the CIRT to all members.
4. Shall establish procedures for the activation of CIRT and maintain and distribute CIRT notification rosters to each participating agency.
5. Shall establish Standard Operating Procedures (SOP) related to the investigative process that ensures a well-defined, systematic, criminal investigation and ensure that all parties understand the SOP. The SOP, when developed and/or updated, will be presented to the CIRT Board of Directors for approval.
6. Shall establish a standardized reporting document for use on all critical incident investigations.
7. Retains the ultimate responsibility for the management and conduct of the investigation team and its individual members and must ensure that there are no conflicts of interest that may impact the investigative process.
8. Shall not be assigned to investigate their own agency.
9. Will assign a CIRT Supervisor to manage the investigation.
10. Responsible for presenting the documented investigation to the effected agency

and affected Commonwealth's Attorney, or designated prosecuting authority.

11. Responsible for the readiness and training of CIRT members. At a minimum, personnel assigned to CIRT should attend a critical incident response/investigations course upon appointment.
12. Shall establish a method for the affected agency's personnel to readily identify CIRT members at the scene of a critical incident.
13. May remove any team member upon the recommendation of a CIRT Supervisor or at the request of a Chief Executive Officer.

C. Assistant CIRT Commander

1. Shall be a command level officer from a participating law enforcement agency and shall be appointed by the CIRT Board of Directors for a two-year term, regardless of agency assignment. The Assistant Commander and Commander shall not be from the same agency.
2. Serves when the Commander's agency is the agency affected by a critical incident.
3. Serves when the Commander is not available.
4. Will be responsible for scheduling routine team meetings and coordinating training courses for all members.

D. CIRT Supervisors

1. Each member agency should appoint one supervisor to serve a two-year term, regardless of agency assignment. This term may be extended at the discretion of each member agency's Chief Executive Officer.
2. Generally, supervisors will be rotated through incidents.
3. Shall not be assigned to investigate their own agency.
4. The Supervisor assigned to a CIRT investigation is responsible for directing the criminal investigation and ensuring the affected Commonwealth's Attorney has been notified of the event and is kept informed of the investigation.
5. The assigned Supervisor will determine the number of investigators required by the CIRT at the scene of a critical incident and is responsible for delegating investigative and administrative tasks to CIRT members.
6. The assigned Supervisor will designate a primary and secondary investigator to conduct the criminal investigation.
7. The assigned Supervisor may request the assistance of other CIRT Supervisors for various support functions but retains overall management responsibilities of the investigation.
8. The assigned Supervisor shall determine a location for the team to assemble and arrange for a briefing of the incident with the affected agency and affected Commonwealth's Attorney, or designated prosecuting authority. The affected agency shall identify an employee, who was not directly involved in the critical incident, to provide an initial briefing to the CIRT.

9. The assigned Supervisor will organize a team debriefing in order to review performance and training needs at the conclusion of a CIRT response.
10. Any CIRT Supervisor may propose training needs to the CIRT Commander that would enhance the knowledge, skills, and abilities of CIRT members.
11. Shall provide annual training to their own agency. Training should include, at a minimum, information contained in this MOU.
12. When the Commander and Assistant Commander are not available, two Supervisors will be appointed to serve as Commander and Assistant Commander during their absence.
    a. The Commander will appoint the Acting Commander and Acting Assistant Commander. The appointment will be documented and distributed to all members and member agencies through written communication.

E. Investigations Team

1. CIRT Investigators will be appointed by their respective Chief Executive Officer.
    a. Generally, investigators assigned to the CIRT will be appointed for a two-year term. This term may be extended at the discretion of each member agency's Chief Executive Officer.
    b. The CIRT is made up of personnel from participating agencies and while larger agencies are expected to appoint 2-3 investigators to the Investigations Team smaller agencies may endeavor to appoint 1-2 investigators to the team.
    c. Agencies should assign their most skilled and experienced personnel to investigate these incidents as the CIRT will be judged by the quality of their investigation.

VIII. Evidence Collection, Preservation and Analysis

A. Upon notification of a critical incident, the CIRT Commander or designee, shall immediately request a Crime Scene Unit from a non-involved CIRT agency.

1. The assigned Crime Scene Unit shall report directly to the CIRT Commander or designee.
2. The assigned Crime Scene Unit will be responsible for processing the crime scene(s) and collection and preservation of evidence.

B. Scene Security

1. The jurisdiction in which the incident occurred will have the responsibility for immediately securing the crime scene(s).
2. This responsibility includes preservation of the integrity of the scene(s), its contents, controlling access, and the identification and separation of witnesses until the CIRT arrives and assumes command.

C. Prior to returning the crime scene to the exclusive purview of the affected agency, the lead investigators, crime scene technicians, CIRT Supervisor(s), Liaison Officer and investigators from the internal affairs function for the affected agency will confer to determine if the collection of evidence is complete.

D. Evidence collection and preservation shall be stored by the collecting agency to ensure chain of custody and quality control.

E. The assigned Crime Scene Unit shall maintain a record of the affected agency's case number or evidence control number to ensure complete accountability of records.

F. The assigned Crime Scene Unit shall provide the CIRT with the case number or evidence control number being used to log and store evidence.

G. Upon conclusion of the criminal investigation and/or prosecution, if warranted, and the expiration of the Statute of Limitations for Civil Action, all evidence collected and stored by the collecting agency will be returned to the affected agency to be stored and retained per the affected agency policies and procedures.

IX. Interviewing the Involved Officer(s)

A. The formal interview will be conducted in accordance with the affected agency's policies and procedures.

B. It is the intent of the CIRT to only conduct the criminal investigation and not become involved in the administrative investigation. It should be made clear to involved Officer(s) that "Garrity" advisements do not apply.

C. Interviews should be videotaped with an audio recording back up whenever possible.

1. Interviews of incident participants and primary witnesses must, at a minimum be audio recorded.

D. Members of the internal affairs function of the affected law enforcement agency will be provided with copies of all interviews for use during the Internal Administrative Investigation.

X. Report Writing

A. The affected agency shall document the critical incident on their standard report form. The involved officer(s) shall not be expected to complete this task.

1. This initial report will be provided to the CIRT Commander or designee.
2. The affected agency will generate a case/incident number to be used on all CIRT documents.

B. Investigators shall deliver all reports to the assigned Supervisor, or designee.

1. Investigators will write reports documenting their participation in the investigation.
2. Investigators will not destroy any reports, notes or memorandums created during their involvement with the investigation.
3. The lead investigator has the ultimate responsibility for report writing and for

collecting reports, notes and memorandums created during the investigation from other investigators and agencies.

4. Prompt completion and distribution of reports is essential.
5. At the conclusion of the investigation the Liaison Officer is responsible for collecting all investigative reports from the lead investigator and ensuring these documents are retained per the affected agency's policies and procedures.
   a. Any and all records created during the investigation are considered property of the affected agency. Therefore, at the conclusion of the investigation, each investigator will ensure all records created have been provided to the lead investigator and will not retain any personal copies.

XI. Affected Agency Responsibility

A. Liaison Officer

1. The Commander, or designee, will assign a Liaison Officer who will act as the affected agency's point of contact for CIRT. They will typically be utilized to communicate and coordinate the activities between the affected agency, the CIRT, and the Commonwealth's Attorney, or designated prosecuting authority. The Liaison Officer will be selected from the affected agency's CIRT Supervisor or Investigations Team assigned member(s).
2. The Liaison Officer should remain available to facilitate the assignment of additional resources and personnel as needed to aid the assigned CIRT Supervisor. This may include the sharing of previous agency criminal investigative reports, training records or other agency documents as needed by the CIRT.
3. The Liaison Officer shall have the authority to activate investigative resources and personnel from their agency as requested by the assigned CIRT Supervisor.

B. The scene of an officer involved critical incident will be secured and preserved by the affected agency. Other than essential law enforcement information needed to preserve public safety and/or information necessary to reassure the community there is no active/ongoing threat, no information regarding the incident will be discussed until contact is made with and the arrival of a CIRT Supervisor.

C. The below guidelines, at a minimum, shall be incorporated into the CIRT SOP.

1. Officer Processing – Whenever possible, the involved Officer(s) should be transported to the affected agency's police facility for processing and interviews.
   a. The initial incident commander of the critical incident should ensure involved officers are photographed/video recorded as they appear on scene, to include any injuries sustained. This attempt to document an officer's appearance must not interfere with medical care.
   b. Statements from the involved Officer(s), beyond the public safety

statement, should only be taken by CIRT and/or members from the affected agency's internal affairs function.

c. Unless extenuating circumstances exist, after the public safety statement is made and the scene is secured, the involved Officer(s) should be afforded the opportunity to be checked by medics.

2. Additional Investigative Assistance – The CIRT may request additional personnel from the affected agency as needed. However, affected agency personnel shall only act under the command of a CIRT Supervisor.

3. Witness Interviews – Prior to CIRT arrival, when witnesses are unable or not willing to wait for those resources to arrive, detectives or officers from the affected agency may conduct those interviews. These interviews should be recorded, documented and contact information for future follow-up shall be obtained.

4. Media Relations

a. The affected agency's media office will maintain exclusive responsibility for the release of information to the media, publishing press releases, handling media inquiries, holding/coordinating press conferences, and releasing information to the public.

b. Prior to releasing any information and to maintain the integrity of the investigation, all media releases shall be reviewed with the CIRT Commander and Supervisor, the lead investigator, and the Chief Executive Officer or designee of the affected and/or employer agency.

5. Police Video or Audio Recording

a. Affected agency personnel responsible for police video recording systems will endeavor to ensure all video and/or audio recordings are downloaded and saved in accordance with the affected agency's policy.

b. Copies of all video and/or audio recordings will be made and distributed to CIRT.

6. Administrative procedures related to the Involved Officer(s) duty status, replacement weapon/firearm, care, peer support and access to Union Representative(s) will be subject to the affected agency policies and procedures.

7. Virginia Freedom of Information Act (FOIA)

a. The affected agency is responsible for handling all FOIA requests.

b. Any and all FOIA requests shall be handled in compliance with the affected agency's policies and procedures.

c. Prior to providing a response, the affected agency FOIA officer shall collaborate the FOIA response with all investigative parties.

d. No record created during the course of an investigation shall be destroyed and will be provided to the affected agency to be retained per agency policy.

XII. ROLE OF THE COMMONWEALTH'S ATTORNEY, OR DESIGNATED PROSECUTING AUTHORITY

A. The affected Commonwealth's Attorney, or designated prosecuting authority, shall be notified of all officer involved critical incidents and provided an initial assessment of the event by the CIRT Commander, or designee.

B. Assist and advise the CIRT.

C. Shall be given access to reports, videos, audio, interviews, and all relevant information gathered in respect to the investigation.

D. The return of any evidence, to include involved weapons and vehicles, must be approved by the Commonwealth's Attorney, or designated prosecuting authority, and coordinated between the CIRT Commander or designee, and the affected agency.

XIII. ROLE OF THE OFFICE OF THE CHIEF MEDICAL EXAMINER (OCME)

A. The OCME shall be notified by the CIRT Commander or designee of any fatal incident and be requested to respond to the scene.

XIV. CIRT FINAL REPORT

A. When the investigation is complete the CIRT Final Report will be presented by the CIRT Commander, or designee, to the affected Chief Executive Officer and Commonwealth's Attorney, or designated prosecuting authority.

B. The Chief Executive Officer of the affected agency may request that the CIRT Commander make a separate presentation to the affected agency and any other review board.

1. No officer(s) directly involved in the incident may attend the presentation to the Commonwealth's Attorney, or designated prosecuting authority.

XV. CIRT CASE FILE

A. When the investigation is complete the entire CIRT case file will be provided to the internal affairs function for the affected agency. This will be facilitated by the Liaison Officer.

December 8, 2020
(public hearing)

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding as of the day and year shown below.

ARLINGTON COUNTY POLICE DEPARTMENT Charles A. Penn, Acting Chief of Police _____ Date	**CITY OF FAIRFAX POLICE DEPARTMENT** Erin Schaible, Chief of Police _____ Date
CITY OF FALLS CHURCH POLICE DEPARTMENT Mary Gavin, Chief of Police _____ Date	**TOWN OF HEARNDON POLICE DEPARTMENT** Maggie A. DeBoard, Chief of Police _____ Date
TOWN OF LEESBURG POLICE DEPARTMENT Gregory C. Brown, Chief of Police _____ Date	**CITY OF MANASSAS POLICE DEPARTMENT** Douglas W. Keen, Chief of Police _____ Date
CITY OF MANASSAS PARK POLICE DEPARTMENT Mario Lugo, Chief of Police _____ Date	**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY POLICE DEPARTMENT** David Huchler, Chief of Police _____ Date
PRINCE WILLIAM COUNTY POLICE DEPARTMENT Jared L. Phelps, Acting Chief of Police _____ Date	**TOWN OF PURCELLVILLE POLICE DEPARTMENT** Cynthia McAllister, Chief of Police _____ Date
TOWN OF VIENNA POLICE DEPARTMENT Jim Morris, Chief of Police _____ Date	

APPENDIX A - DEFINITIONS

Administrative Investigation – Non-criminal internal investigation by police department personnel utilized to identify any policy and/or procedure violations. Generally conducted by the Employer Agency's internal affairs function.

Affected Agency – The employing agency of the involved law enforcement officer(s).

Chief Executive Officer – The Chief of Police or Sheriff from each of the member agencies that are party to this MOU.

Command Level Officer – Officers with command rank (lieutenant, equivalent or above).

Criminal Investigation – Investigation conducted by the CIRT to determine if any criminal laws have been violated. The investigation shall be performed following standard operating procedures.

Critical Incident – *The discharge of a firearm, use of force, or other action by an officer(s) that results in death or serious bodily injury to any person, or the unexplained death of a person in police custody, or the suicide of an officer.*

In-Custody Death – Any custodial death where a subject is being detained, arrested, or is in the custody of a law enforcement officer except those that occur while the subject is under a physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of toxic substance.

Investigations Team – Those investigators assigned by the CIRT member agencies to conduct the criminal investigation of the incident.

Involved Officer – Unless otherwise indicated, refers to those sworn personnel in an on-duty or off-duty status whose use of force or other action results in the death or serious bodily injury to another person, and any officer who discharges his/her firearm at a subject or detainee, regardless of injury or death.

Member – Appointed or assigned personnel to the CIRT from member agencies.

Member Agency – The law enforcement agencies that are members of the Northern Virginia Critical Incident Response Team.

Officer-Involved Shooting – A discharge of a firearm by an officer during a hostile encounter, while on-duty or off-duty, irrespective of injuries to self, subjects, officers, or third parties.

Police Employee – A person compensated by a particular law enforcement agency or authorized volunteer of that law enforcement agency who performs an act for the benefit of and subject to the control of that agency. However, an officer acting pursuant to authority of a special commission is not considered an employee of that agency.

Serious Bodily Injury – Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

Subject – The person who is injured by the act of the Involved Officer, whether or not the injury is intentional.

Team Supervisor – The investigator who is assigned by the CIRT Commander to lead and manage the CIRT investigation.

December 8, 2020
(public hearing)

CONSENT AGENDA

11. **Resolution 20-G-65, to award Contract IFB #21-04, HVAC Preventative Maintenance Services;**

12. **Resolution 20-G-61, to ratify a Second Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes;**

13. **Resolution 20-G-62, to ratify a Second Extension of Contract pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Fitzgerald Law Group, PLC for prosecutorial services;**

14. **Resolution 20-G-58, of official intent to reimburse expenditures with proceeds of a borrowing;**

15. **Resolution 20-G-60, to authorize project applications to the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program / Congestion Mitigation-Air Quality (RSTP/CMAQ) funding for Fiscal Year 2027 and to endorse the town's transportation projects included in VDOT's FY2021-2026 Six-Year Improvement Program; and**

16. **Resolution 20-G-63, to authorize the Town Manager to sign a second Federal Subaward Agreement between the Town and Fairfax County for the use of additional Coronavirus Aid, Relief, and Economic Security (CARES) funds under the Commonwealth of Virginia's Municipal Utility Relief Program.**

On motion of Councilmember McKenna, seconded by Councilmember Baker, the Consent agenda items were approved by unanimous roll call vote by electronic means, without comment. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

December 8, 2020
(public hearing)

Resolution 20-G-65, Award of Contract IFB #21-04, HVAC Preventative Maintenance Services.

WHEREAS, staff developed a term contract for the HVAC Preventative Maintenance Services for town facilities; and

WHEREAS, IFB #21-04, HVAC Preventative Maintenance Services was advertised on the Town of Herndon website and eVA Commonwealth of Virginia procurement website to maximize fullest competition; and

WHEREAS, eight bids were received and publicly opened and read aloud on October 30, 2020 at 11:00 a.m. The results are listed below:

	BID BASED ON YEARLY COST
Mechanical Services Industries, LLC	$29,597.00
The Tustin Group	$35,277.08
Kelly HVAC, Inc.	$38,340.00
Atlantic Constructors, Inc.	$44,100.00
Paramount Mechanical Corp.	$52,846.00
Constellation New Energy	$58,545.63
Uniaire	*$45,515.00 missing addendums 1, 2 & 4
Vernon Heating & Cooling	$ 0.00 No pricing listed; and

WHEREAS, in accordance with the specifications, the contract may be extended by the Town for four successive one-year periods; and

WHEREAS, it is the staff's recommendation to award the contract to the lowest responsive and responsible bidder, Mechanical Services Industries, LLC; and

WHEREAS, funds to support the work with bid item unit costs established by the contract are available in the following Budget accounts: Building Maintenance Contract Services 001-08-84-000-420610 and Building Maintenance Repair Account 001-08-84-000-420820.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby awards Contract IFB #21-04, Preventative Maintenance Services, be awarded to Mechanical Services Industries, LLC.

***

December 8, 2020
(public hearing)

Resolution 20-G-61, to ratify a Second Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

WHEREAS, the parties entered into a License Agreement dated June 25, 2015, with an emergency extension dated August 20, 2020 for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes; and

WHEREAS, the License Agreement expired on November 30, 2020; and

WHEREAS, Town and Licensor desired to extend the term of the Agreement to expire on June 30, 2021; and

WHEREAS, the Extension of License was signed by the Town Manager and ratified by Town Council.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Second Extension of License dated November 30, 2020 and signed by the Town Manager between the Town of Herndon between the Town and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

[Note: Attached for reference is the second extension of license b/n the town and Nafis Peter Ahmed and Ruth Llabres Ahmed dated November 30, 2020.]

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Second Extension of License 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 Second Extension of License dated November 30, 2020, hereby extends the November 30, 2020 termination date of the existing License between the TOWN OF HERNDON, VIRGINIA (Town) and NAFIS PETER AHMED AND RUTH LLABRES AHMED (Ahmed) dated June 25, 2015, with an Emergency Extension dated August 20, 2020, for the use of the lot at the corner Lynn Street and Station Street (the License) for a period of seven calender months (the Extension).

THEREFORE, for the consideration stated in the License and herein, the parties agree as follows:

1. The License is incorporated by reference.
2. The License shall terminate on June 30, 2021.
3. Town will pay Ahmed $1250.00 per calendar month during the Extension.
4. Town will provide Ahmed evidence of its insurance coverage for lot during the extension.
5. In all other respects, the License is confirmed.

Signatures on following pages

Attachment
20-G-61

DocuSign Envelope ID: DD4CEAF9-A4EE-4B0E-9F23-E54CC3B30E19

Nafis Peter Ahmed

Ruhkhsana Ahmed

COMMONWEALTH OF VIRGINIA
COUNTY OF Fairfax:
The foregoing instrument was acknowledged before me this 23rd day of November 2020 by NAFIS PETER AHMED.

Notary Public

My Commission Expires: 4/30/2022

Registration No. 221408

MICHAEL L. O'REILLY
NOTARY PUBLIC
REGISTRATION # 221408
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2022

~~COMMONWEALTH OF VIRGINIA~~
~~COUNTY OF _____:~~
~~The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by RUTH LEADRES AHMED.~~

~~Notary Public~~

~~My Commission Expires: _____~~

~~Registration No. _____~~

TOWN OF HERNDON, VIRGINIA

William H. Ashton II
Town Manager

COMMONWEALTH OF VIRGINIA

COUNTY OF Fairfax, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that William H. Ashton II as Town Manager of the Town of Herndon, Virginia, whose name is signed to the foregoing Extension of License, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 24th day of November, 2020.

Notary Public

My Commission Expires: 5/31/2022

My Notary Registration Number: 7771261

APPROVED AS TO FORM:

Lesa J. Yeatts
Town Attorney

***

December 8, 2020
(public hearing)

Resolution 20-G-62, to ratify a Second Extension of Contract pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Fitzgerald Law Group, PLC for prosecutorial services.

WHEREAS, the parties entered into a contract dated May 19, 2015, as amended on June 5, 2018, and as extended due to emergency; and

WHEREAS, the Contract will expire on January 1, 2021; and

WHEREAS, Town and Fitzgerald desire to temporarily extend the term of the Contract to expire on June 30, 2021; and

WHEREAS, the Second Extension of Contract Extension was signed by the Town Manager and ratified by Town Council.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Second Extension of Contract dated November 30, 2020 and signed by the Town Manager between the Town of Herndon and The Fitzgerald Law Group, PLC for prosecutorial services.

[Note: Attached for reference is the second extension of contract b/n the town and The Fitzgerald Law Group, PLC dated November 30, 2020.]

December 8, 2020
(public hearing)

Second Extension of Contract Pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, 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 Second Extension of Contract dated November 30, 2020 hereby extends the January 1, 2021 termination date of the existing contract for prosecutorial services between the Town of Herndon, Virginia (Town) and the Fitzgerald Law Group, PLC (Fitzgerald) dated May 19, 2015, and amended on June 5, 2018, and extended due to emergency (Contract) for a period of six months (the Second Emergency Extension).

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

1. The Contract is incorporated by reference.
2. The Contract shall terminate on **June 30, 2021.**
3. Town shall continue to pay Fitzgerald $6,499.73 per month for prosecutorial services during the Extension.
4. In all other respects, the Contract is confirmed.

TOWN OF HERNDON, VIRGINIA

By: William H. Ashton II

Name: William H. Ashton II

Title: Town Manager

THE FITZGERALD LAW GROUP, PLC

By: Ellen Kay Fitzgerald

Name: Ellen Kay Fitzgerald

Title: Attorney at Law

APPROVED AS TO FORM

By: Lesa J. Yeatts

Name: Lesa J. Yeatts

Title: Town Attorney

Attachment
20-O-62

***

Resolution 20-G-58, of official intent to reimburse expenditures with proceeds of a borrowing.

December 8, 2020
(public hearing)

RESOLUTION OF OFFICIAL INTENT TO REIMBURSE EXPENDITURES WITH PROCEEDS OF A BORROWING

WHEREAS, the Town of Herndon, Virginia (the "Town"), has entered into a Comprehensive Agreement dated November 1, 2017, as amended, with Comstock Herndon Venture LC, establishing a public-private partnership for the redevelopment of certain real estate owned by the Town into a mixed-use town center project, arts center and associated parking (the "Project"); and

WHEREAS, the Town intends to commence work on the public portion of the Project and to advance its own funds to pay the related Project costs (the "Expenditures"); and

WHEREAS, the Town may determine to issue tax-exempt obligations, taxable obligations, or a combination thereof (collectively, the "Bonds"), and use the proceeds to reimburse such Expenditures; and

WHEREAS, the Town desires to preserve its option under federal tax law to make such reimbursement by adopting this Resolution.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HERNDON, VIRGINIA:

1. The Town may utilize the proceeds of Bonds in an amount not currently expected to exceed $4,000,000 to pay or reimburse any Expenditures that are originally paid on or after the date of this Resolution (and including, as allowed under federal tax law, any Expenditures originally paid up to 60 days prior to the date of this Resolution).

2. Each Expenditure was or will be, unless otherwise approved by bond counsel, either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Bonds, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Town so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Town.

3. Any reimbursement allocation, which is a written allocation by the Town that evidences the Town's use of Bond proceeds to reimburse an Expenditure, will be made no later than 18 months after the *later of* the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is originally paid. Notwithstanding such time limitation, the Town recognizes that exceptions are also available under federal tax law that allow reimbursements for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for certain construction projects of at least five years.

4. The Town intends that the adoption of this Resolution confirms the "official intent" within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended.

5. This Resolution shall take effect immediately upon its passage.

WITNESS my signature and the seal of the Town of Herndon, Virginia, this 8th day of December, 2020.

Vicki L. Wellershaus, Town Clerk
Town of Herndon, Virginia

(SEAL)

This is certified to be a true and accurate copy of Resolution 20-G-58 adopted at a legally convened meeting of the Town Council of the Town of Herndon on December 8, 2020.

Margie C. Tabel, Deputy Town Clerk

TOWN OF HERNDON, VIRGINIA 1879

***

December 8, 2020
(public hearing)

Resolution 20-G-60, Authorizing two applications to the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) funding for the Federal fiscal year 2027 and to endorse project priorities of the Virginia Department of Transportation (VDOT) Six-Year Improvement Program for fiscal years 2021 through 2026.

WHEREAS, the town's RSTP project priority, titled *'Sterling Road Multimodal Improvements'* is for access management and multi-modal measures to improve traffic signalization, add applicable turning lanes and provide for landscaping and safer ADA accessible sidewalks and crosswalks; all in an effort to increase safety, reduce congestion, enhance circulation and connectivity while retaining the residential character of the Sterling Road corridor; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008, and as amended through November 17, 2020, advises the improvement of Sterling Road to enhance traffic mobility while providing for safer accommodations for pedestrians and bicyclists; and

WHEREAS, the Town of Herndon adopted FY2021-FY2026 Capital Improvement Program, includes the improvement of Sterling Road between Elden Street and Rock Hill Road at the town limits; and

WHEREAS, the *'Sterling Road Multimodal Improvements'* project is included in the Northern Virginia Transportation Authority's TransAction Plan; and

WHEREAS, the study now underway and being prepared by the town's transportation consultant includes proposed concept designs, traffic impact analysis and proposed new traffic signalization at Crestview Drive as well as the feasibility of a bike facility between Elden Street and the town limits; and

WHEREAS, the town's CMAQ project priority is titled *'Herndon Metrorail Intermodal Access Improvements'* for new intersection signalization as well as multimodal roadway, pedestrian, bike and transit enhancements that will serve transit-oriented development along Herndon Parkway; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008, and as amended through November 17, 2020, promotes the goal of facilitating alternative modes of transportation within the town; and

December 8, 2020
(public hearing)

WHEREAS, the Town of Herndon adopted FY2021-FY2026 Capital Improvement Program, includes the improvements of vehicular and pedestrian access to Herndon Metrorail; and

WHEREAS, town approved engineering design plans prepared by the town's transportation consultant shows new traffic signalization at the proposed Worldgate Drive extension with Herndon Parkway as well as intersection enhancements such as pedestrian signalization, refuge islands and crosswalks; and

WHEREAS, the new signalization at the proposed Worldgate Drive and Herndon Parkway along with the vehicle/bus bays will provide an increase level of mulitmodal access and circulation, via new roadway connectivity and wide ADA accessible sidewalks with streetlights, to the pedestrian entrance facility of the Metrorail Station, as per town adopted Herndon Metrorail Station Area Plan and approved Dulles Corridor Rapid Transit Project - final Environmental Impact Statement; and

WHEREAS, the project includes roadway reconstruction as well as costs associated with relocating existing curbing, streetlights, sidewalks, and underground utilities to create better pedestrian and bicycle access to the pedestrian entrance facility located on the northside of the Herndon Metrorail Station; and

WHEREAS, the town's CMAQ project will improve and integrate pedestrian and bicycle facilities within the street and transit network in concert with the Trail and Sidewalk Program and other project components of the town's Capital Improvement Program involving transportation improvements.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, does hereby authorize the Town Manager to submit two applications to the Northern Virginia Transportation Authority, and through the Virginia Department of Transportation, for FY2027 Federal funding for the following projects:

a) an allocation funding request of up to $1,000,000 in Regional Surface Transportation Program (RSTP) funding for the *'Sterling Road Multimodal Improvements'* project (Elden Street to the town limits); and

b) an allocation funding request of up to $700,000 in Congestion Mitigation and Air Quality (CMAQ) funding for the *'Herndon Metrorail Intermodal Access Improvements'* project.

BE IT FURTHER RESOLVED that the Town Council continues to support the projects included in the state adopted FY2021-2026 Virginia Department of Transportation Six-Year Improvement Program, including East Elden Street Improvements and Widening (UPC 50100), East Spring Street Widening (UPC 105521), Herndon Metrorail Intermodal Access Improvements (UPC 104328, UPC 106986), Herndon Parkway and Van Buren Street Intersection Improvements (UPC 89889), Van Buren Street Multimodal Improvements (UPC 107658), Elden Street and Monroe Street Intersection Improvements (UPC 108690), Historic Herndon Revitalization (UPC 70321) and Herndon Trails to Metrorail (UPC 104342).

***

Resolution 20-G-63, to authorize the Town Manager to sign a second Federal Subaward Agreement between the Town and Fairfax County for the use of additional Coronavirus Aid, Relief, and Economic Security (CARES) funds under the Commonwealth of Virginia's Municipal Utility Relief Program.

WHEREAS, on March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide support directly to state, local, and tribal governments to address the COVID-19 pandemic; and

WHEREAS, the first Federal Subaward Agreement between the Town of Herndon and Fairfax County for use of CARES Act funds was made as of July 6, 2020 and signed on July 29, 2020; and

WHEREAS, on November 19, 2020, the Commonwealth of Virginia's Department of Housing and Community Development sent a memorandum to municipal utilities outlining the requirements and application process for a municipal utility relief program; and

WHEREAS, a requirement of the program is a partnership with Fairfax County to act as the Town's fiscal agent; and

WHEREAS, Fairfax County has agreed to act as the Town's fiscal agent for this program and will require a second Federal Subaward Agreement to be executed; and

WHEREAS, the second Federal Subaward Agreement will not be ready for signature until after the Town Council's December 8, 2020 Public Session and time is of the essence with regard to disbursement of these funds.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby authorizes the Town Manager to sign the second Federal Subaward Agreement between the Town of Herndon and Fairfax County for use of CARES funds under the Commonwealth of Virginia's Municipal Utility Relief Program.

17. ADJOURNMENT

Councilmember Baker moved to adjourn the meeting of the December 8, 2020 public hearing, and Vice Mayor Olem seconded the motion.

Vice Mayor Olem asked Mayor Merkel if she had comments to share before the meeting adjourned.

Mayor Merkel's Comments

Mayor Merkel provided comments about the decade that passed since she and Vice Mayor Olem first ran for Council. She stated that in 2010 Herndon really had not started planning for Metro and many residents did not know where the station would be. Now in 2020, Herndon Station was ready to open, and the town was finally under contract with Comstock to build the downtown. Mayor Merkel shared that most of the recent items they had voted on concerning the downtown seemed like the perfect way to wrap up her time on Council. She stated that Herndon had gone from a town divided over day labor to a small town with a worldview that was a hometown where everyone feels welcome and knows their neighbors. Mayor Merkel said Herndon celebrates diversity and inclusion no matter where you are from, what you look like, how you worship, how you communicate, or who you love, and she was proud of the role she had been privileged to play in making some of those things happen.

She stated it was not an easy decision to not run for re-election after being at the dais for one-third of her adult life. Mayor Merkel shared with Mayor-Elect Olem that being Mayor was the best job in politics, and she thanked Herndon for allowing her to serve. She shared that she enjoyed meeting people, visiting town businesses, and getting to know residents. Mayor Merkel stated that she truly loved serving as the mayor.

Mayor Merkel also thanked Mr. Ashton and Ms. Yeatts for their great working relationship and guiding her to grow in her job. She stated town staff is the best in the business.

December 8, 2020
(public hearing)

Mayor Merkel shared that she started her tenure as mayor on July 1, 2012 three days after the derecho, and she was ending it during a global pandemic. She shared this year was nothing that anyone expected. She never expected to declare a pandemic, public health emergency. She expressed that she had learned a lot, seen the region pull together, and that a vaccine is coming.

Mayor Merkel also expressed her thanks to Richard Downer for asking her 15 years ago if she thought of getting involved in the town. She also thanked the ladies at the "Ladies Brunch" for the courage to run in the first place.

Mayor Merkel thanked her husband and children for their sacrifices which allowed her to serve. She shared that she and her family love the Town of Herndon and plan to be here for a long time. There was no place she would rather raise her family.

Mayor Merkel concluded her comments by thanking Council and all past Councilmembers who she served with for their service to the town. She then passed Mayor-Elect Olem the gavel virtually on the Webex and extended her congratulations.

The question was called on the motion which carried by unanimous roll call vote by electronic means, and the meeting of the December 8, 2020 public hearing adjourned at 9:38 p.m. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Lisa C. Merkel

Lisa C. Merkel
Mayor

TOWN OF HERNDON, VIRGINIA 1879

Jessica Sizemore

Jessica Sizemore
Legislative Assistant

Minutes approved by Town Council: January 12, 2021.

NOTE:

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