

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON COUNCIL CHAMBERS BUILDING *
765 LYNN STREET
April 6, 2021
7:00 PM**

* The meeting is being held electronically pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments. Individuals are encouraged to submit written comments for the record to town.clerk@herndon-va.gov

CALL TO ORDER

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

TOWN MANAGER UPDATES

3. Pandemic Update (Town Manager)
4. Council Initiatives Update (Town Manager)

PUBLIC HEARINGS

5. Ordinance 21-O-06, to amend Chapter 74 (UTILITIES), Article II (Sewers & Sewage Disposal), Division 5 (Sanitary Sewer System Rates & Charges), Section 74-262 (Schedule of Rates); and Article III (Water), Division 2 (Service), Subdivision II (In-Town Service Charges), Section 74-326 (Schedule of Charges), to increase the usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2021
6. Ordinance 21-O-07, to Levy Taxes on Real Estate and Manufactured Homes, and Other Subjects for the Fiscal Year 2022 Budget
7. Resolution 21-G-37, to Adopt a Fiscal Planning Resolution for the Fiscal Year 2022 Budget for the Town of Herndon
8. Ordinance 21-O-08, to Appropriate Funds to implement the Fiscal Year 2022 Budget for the Town of Herndon, establishing the Pay Plan, and reserving on-going and Capital Funding for this Fiscal Year

GENERAL

9. Resolution 21-G-38, to ratify a Third Temporary Emergency Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Fairfax County School Board
10. Ordinance 21-O-09, to amend Chapter 30 (FINANCE AND TAXATION), Article VIII (Fiscal Procedures), Division 2 (Procurement), Section 30-309 (Competitive Negotiation) to update public notice language and architectural and professional engineering project sum and fee limitations consistent with the Virginia Public Procurement Act
11. Resolution 21-G-39, to award contract IFB #21-07, Legal Advertisement Services
12. Ordinance 21-O-10, to amend Chapter 46 (OFFENSES), Article II (Firearms, Crossbows, and Pneumatic Guns), to amend definitions and to create a new Section 46-60 (Possession of Firearms on Town Property), to prohibit the possession, carrying, or transportation of any firearms, ammunition, or components or combination thereof on Town property, in Town buildings or on certain other areas owned by the Town

DISCUSSION

13. Informational Update, 555 Herndon Parkway – Penzance Development
14. Organizational Orientation Discussion by the Town Manager and the Acting Director of Golf and the Town Clerk

ROUNDTABLE

CLOSED MEETING

A closed meeting as provided under:

- Section 2.2-3711 (A)(3) to consider the disposition of publicly held real estate where discussion in an open meeting would adversely affect the bargaining position or negotiation strategy of the public body; and
- Section 2.2-3711 (A)(8) for consultation with the Town Attorney to provide legal advice regarding recent legislation affecting Chapter 54 of the Town Code



STAFF REPORT

Town Council

April 6, 2021

Title:

Ordinance, to amend Chapter 74 (UTILITIES), Article II (Sewers & Sewage Disposal), Division 5 (Sanitary Sewer System Rates & Charges), Section 74-262 (Schedule of Rates); and Article III (Water), Division 2 (Service), Subdivision II (In-Town Service Charges), Section 74-326 (Schedule of Charges), to increase the usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2021.

Staff Contact:

Scott Robinson, Director of Public Works
(phone) 703-435-6853
(e-mail) scott.robinson@herndon-va.gov

Background:

The town provides water and sewer services on a continual basis to approximately 6,075 accounts. Charges for services are designed to recover the cost of delivery of service to customers. For FY 2022, the challenges include a 27% increase in sewer commodity costs along with scheduling of asset replacements. In the recent past, the town implemented regular rate updates supported by a rolling five-year study conducted by external consultants and reviewed by the town's financial advisors, who have recommended that the town adopt a strategy to review usage charges annually. No rate increases were implemented for FY 2020 and the refresh of the fee model was put on hold for FY 2021 at the onset of the COVID-19 pandemic. The refresh of the study is proposed again for FY 2022. In order to recover increased costs to the town to deliver services, a rate increase of 1.5% is recommended for both water, sewer fees and peak water usage charges in FY 2022.

Proposed Changes:

- Sewer Usage base charge: from \$6.19 to \$6.28 (per 1,000 gallons, based on water usage, not to exceed usage in excess of the average consumption of the preceding two winter quarter billing periods).

Staff Report
Sewer and Water Usage Fee Increases
April 6, 2021
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- Water usage base charge: from \$3.16 to \$3.21 (per 1,000 gallons, of water consumption, as measured by readings of the water meter serving the property).
- Peak water usage charges: from \$5.38 to \$5.46 (per 1,000 gallons all water consumed during the peak use periods in excess of the average consumption of the preceding two winter quarter billing periods. (This peak use period charge will be applied in addition to the base water usage charge)

Fiscal Impact:

The rate increases should result in approximately \$97,000 in additional revenues for the Water and Sewer Fund. Generally, the majority of the town's sewer and water customers will see their quarterly bills increase by less than 1.5% as a result of these changes.

As the Water and Sewer Fund is an enterprise fund, these fee increases will not impact the General Fund. However, there could be a negative impact to the General Fund if fee increases are not adopted and the General Fund is compelled to support the Water and Sewer Fund.

Staff Recommendation:

Staff recommends approval of the proposed ordinance to amend Chapter 74 to increase the usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2021.

Attachment:

1. Draft Ordinance

Prepared and Approved by:



Scott Robinson, PE
Director of Public Works

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 27, 2021

Ordinance- to amend Chapter 74 (UTILITIES), Article II (Sewers & Sewage Disposal), Division 5 (Sanitary Sewer System Rates & Charges), Section 74-262 (Schedule of Rates); and Article III (Water), Division 2 (Service), Subdivision II (In-Town Service Charges), Section 74-326 (Schedule of Charges), to increase the usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2021.

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

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

CHAPTER 74 (UTILITIES)

Article II. Sewers & Sewage Disposal

Division 5. Sanitary Sewer System Rates & Charges

Sec. 74-262. – Schedule of Rates.

- (a) The rate schedule for sanitary sewer service shall be determined on the basis of water consumed and shall be charged at the rate of ~~\$6.19~~ **\$6.28** per 1,000 gallons of water used, except as otherwise provided in this division.

Article III. Water

Division 2. Service

Subdivision II. In-Town Service Charges

Sec. 74-326. Schedule of charges.

- (a) The water usage charge shall be ~~\$3.16~~ **\$3.21** per 1,000 gallons, based on the consumption of water as measured by readings of the water meter serving the property.

(c) All water consumed during the peak use periods in excess of the average consumption of the preceding two winter quarter billing periods shall be charged an additional amount of ~~\$5.38~~ **\$5.46** per 1,000 gallons. This peak use period charge shall be applied in addition to the base water usage charge in subsection (a) above.

2. This ordinance shall be effective for all meter readings taken on or after July 1, 2021.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 27, 2021

Ordinance- to Levy Taxes on Real Estate and Manufactured Homes, and Other Subjects for the Fiscal Year 2022 Budget.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that the Town Council fixes and orders the tax levies for the fiscal year beginning July 1, 2021 and ending June 30, 2022, as follows:

Real Estate

On each \$100.00 of the valuation of real estate and improvements to the Town.
\$.2650

Personal Property and Merchants' Capital

On each \$100.00 of the valuation of tangible personal property classified by Section 58.1-3503 and 58.1-3510 of the Code of Virginia.
\$.00

Vehicles Used as Manufactured Homes and Offices

On each \$100.00 of the valuation of vehicles without motive power, used or designed to be used as manufactured homes as classified by Section 58.1-3506(A), paragraph 10, of the Code of Virginia.
\$.2650

Farm Machinery, Farm Tools and Farm Livestock

On each \$100.00 of the valuation of farm machinery, farm tools and farm livestock as classified by Section 58.1-3505 of the Code of Virginia.
\$.00

Machinery and Tools

On each \$100.00 of the valuation of machinery and tools classified by Section 58.1-3507 of the Code of Virginia.
\$.00

Other Classifications of Tangible Personal Property

On each \$100.00 of the valuation of tangible personal property as classified by Section 58.1-3506 [except for Section 58.1-3506(A), paragraph 10] of the Code of Virginia.
\$.00

Miscellaneous Levies

Except as provided above and other ordinances adopted by the Town Council in this budget cycle all other taxes and licenses previously enacted by the town are imposed and levy made to the same extent and at the same rate as during the Fiscal Year 2020-2021.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

April 27, 2021

Resolution- to adopt a Fiscal Planning Resolution for the Fiscal Year 2022 Budget for the Town of Herndon.

WHEREAS, the Town Manager of the Town of Herndon, Virginia, has submitted to the Town Council of the Town of Herndon, Virginia, a proposed budget; and

WHEREAS, the town properly advertised the April 13 and April 27, 2021 public hearings on the budget; and

WHEREAS, it is the intent of the Town Council of the Town of Herndon, Virginia, to adopt the proposed budget with amendments, if any.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby adopts for the purpose of fiscal planning during the fiscal year 2021-2022 for the Town of Herndon, Virginia, the budget prepared by the Town Manager, set out in "Proposed FY 2022 Budget" dated April 1, 2021, on file in the office of the Town Manager.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 27, 2021

Ordinance- to Appropriate Funds to implement the Fiscal Year 2022 Budget for the Town of Herndon, establishing the Pay Plan, and reserving on-going and Capital Funding for this Fiscal Year.

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

1. There is appropriated and authorized for expenditure during the Fiscal Year 2021-2022 such sums as appear in the Fiscal Planning Budget for the Fiscal Year 2021-2022 as set out in "Proposed Annual Budget 2021-2022" dated April 1, 2021, on file in the office of the Town Manager, and as may be subsequently modified by the Town Council.
2. No money shall be withdrawn from the treasury of the town and no obligation for expenditure of money can be incurred, except in accordance with the Fiscal Planning Budget, or with supplemental appropriations as may be made by the Town Council.
3. The town advertised the public hearing at least once in "The Times" and held a public hearing on the budget at least seven days prior to approval of the budget.
4. The 2021-2022 proposed schedule of salaries, set out in the Fiscal Planning Budget, are adopted effective July 1, 2021.
5. The Town Council may award to the Town Manager and the Town Attorney bonuses as provided for in the Fiscal Planning Budget for Fiscal Year 2021-2022 for exceptional services rendered. Any such bonuses shall not become a part of these officers' annual salary.
6. The Town Council reserves, encumbers, and appropriates for Fiscal Year 2021 funding for capital and on-going projects, for which funds were previously appropriated. The Town Manager as of July 1, 2021, shall take the appropriate accounting steps to reserve and encumber these funds as of that date for Fiscal Year 2021-2022 and to report to the Mayor and Town Council in this regard.



STAFF REPORT

Town Council - Work Session April 6, 2021

Title:

Resolution - to ratify a Third Temporary Emergency Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Fairfax County School Board.

Staff Contacts:

Scott Robinson, Director of Public Works
(703)435-6853
Scott.robinson@herndon-va.gov

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

Action Requested:

Fairfax County is requesting, and staff is recommending that the Town Council ratify a Resolution for a Third Temporary Emergency Extension of Lease between the Town and Fairfax County School Board, pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended.

Description:

The Fairfax County School Board currently leases 13,593 sq. ft of office space office space in the Town's building at 397 Herndon Parkway. The lease also allows for use of the rear parking lot for overnight and weekend storage of its maintenance vehicles. The expiration date of the current lease was September 30, 2020. Due to the state of emergency and ongoing negotiations for a new lease, it was necessary to extend the expiration dates:

- 1st Emergency Extension - August 31, 2020
 - Expired December 31, 2020
- 2nd Emergency Extension - November 16, 2020
 - Expired March 31, 2021

Fairfax County determined they would still not have sufficient time to have a new lease negotiated, approved and signed by their Board before the expiration date of

March 31, 2021 and requested that the lease expiration date be extended a third time to August 31, 2021.

The Town Manager has signed the Third Temporary Emergency Extension of Lease pursuant to the Town's Continuity of Government Ordinance. The Town Council must now consider ratification of the Third Temporary Emergency Extension of Lease to Fairfax County School Board in order to extend the expiration date to August 31, 2021 to finalize its approval.

Fiscal Impact:

None.

Recommendation:

Staff recommends that the Town Council approve the Resolution as proposed.

Attachments:

- Resolution
- Third Temporary Emergency Extension of Lease Agreement

Prepared and Approved By:



Scott Robinson, Director of Public Works



Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

APRIL 13, 2021

Resolution- to ratify a Third Temporary Emergency Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Fairfax County School Board.

WHEREAS, the parties entered into a Lease Agreement dated March 2, 2005, as amended on March 29, 2010, October 1, 2010, and October 1, 2015, with Emergency Extensions on August 31, 2020 and November 16, 2020 for 13,593 sq. ft of office space in the Town's building at 397 Herndon Parkway, as well as use of the rear parking lot for overnight and weekend storage of its maintenance vehicles; and

WHEREAS, the Lease Agreement expired on March 31, 2021; and

WHEREAS, Town and Lessee desired to temporarily extend the term of the Agreement to expire on August 31, 2021; and

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

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Third Temporary Emergency Extension of Lease dated March 24, 2021 and signed by the Town Manager between the Town of Herndon and Fairfax County School Board for space in the Town's building at 397 Herndon Parkway in Herndon.

**Third Temporary Emergency Extension of Lease Pursuant to
Ordinance 20-O-23 Continuity of Governmental Operations due to
State of Emergency, Pandemic Disaster**

Pursuant to the powers conferred upon the Town Manager by Ordinance 20- O- 23, as amended, this Third Temporary Emergency Extension of Lease dated March 24, 2021 hereby extends the March 31, 2021 termination date of the existing Lease between the Town of Herndon, Virginia (Landlord) and Fairfax County School Board (Tenant), dated March 2, 2005, as amended on March 29, 2010, October 1, 2010, and October 1, 2015, with Emergency Extensions on August 31, 2020 and November 16, 2020 (collectively, the Lease) for 13,593 square feet of space at 397 Herndon Parkway (the Premises), as set out in this Third Temporary Emergency Extension of Lease (Temporary Emergency Extension).

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

1. The Lease is incorporated by reference.
2. The Lease shall terminate on August 31, 2021.
3. In all other respects, the Lease is confirmed.

TOWN OF HERNDON, VIRGINIA

FAIRFAX COUNTY SCHOOL BOARD

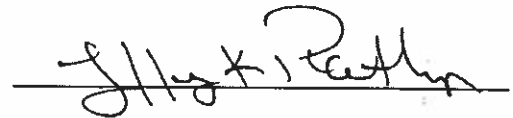
By: _____



Name: William H. Ashton II

Title: Town Manager

By: _____



Name: Jeffery K. Platenberg

Title: Assistant Superintendent

APPROVED AS TO FORM

By: _____



Name: Lesa J. Yeatts

Title: Town Attorney

STAFF REPORT

Town Council

April 6, 2021

Title:

Ordinance – to amend Chapter 30 (FINANCE AND TAXATION), Article VIII (Fiscal Procedures), Division 2 (Procurement), Section 30-309 (Competitive Negotiation) to update public notice language and architectural and professional engineering project sum and fee limitations consistent with the Virginia Public Procurement Act.

Staff Contact:

John Irish, Deputy Director of Public Works
(phone) 703-435-6853 ext. 2074
(e-mail) john.irish@herndon-va.gov

Background:

The proposed ordinance amends the town's procurement procedures to make them consistent with the Virginia Public Procurement Act (VPPA) by increasing the architectural and professional engineering contract fee limits for the one-year sum and single project fees and by allowing advertising in a printed newspaper to be a local choice and not a requirement.

The Virginia Public Procurement Act (VPPA) was amended by the General Assembly in 2017. The amendments increased the sum of all projects performed in a one-year contract term from \$500,000 to \$750,000, and the fee for any single project from a maximum of \$100,000 to a maximum of \$150,000. Additionally, the amendments changed the public notification requirement in printed newspapers from a "shall" condition to a "may".

Due to the State of Emergency, Continuity of Government procedures and related workload, this proposed change to the town procurement code has been delayed in being presented for adoption.

Fiscal Impact:

None

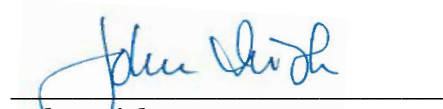
Staff Recommendation:

Staff recommends Town Council approve the Ordinance to amend Chapter 30 Finance and Taxation, which shall include the update to the architectural and engineering project sum and single project fees (Herndon's Code of Ordinance Sec. 30-309 (j) (4)) and the public notice language (Herndon's Code of Ordinance Sec. 30-309 (b)) and remain consistent with the current Virginia Public Procurement Act.

Attachments:

Draft Ordinance

Staff:



John Irish
Deputy Director of Public Works

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 13, 2021

Ordinance – to amend Chapter 30 (FINANCE AND TAXATION), Article VIII (Fiscal Procedures), Division 2 (Procurement), Section 30-309 (Competitive Negotiation) to update public notice language and architectural and professional engineering project sum and fee limitations consistent with the Virginia Public Procurement Act.

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

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

CHAPTER 30 (FINANCE AND TAXATION)

Article VIII. Fiscal Procedures

Division 2. Procurement

Sec. 30-309 – Competitive Negotiations.

- (b) *Public notice.* At least ten days prior to the date set for receipt of proposals by posting on the Virginia Department of General Services' central electronic procurement website or other appropriate websites. Additionally, the town shall **may** publish a notice in a newspaper of general circulation in the area where contract performance will occur so as to provide reasonable notice to the maximum number of offerors that are reasonably anticipated to submit proposals in response to the particular request. In addition, the procurement official or officer may solicit proposals directly from potential contractors.

- (j) *Architectural and professional engineering term contracting; limitations.*

- (2) The sum of all projects performed in a one-year contract term shall not exceed ~~\$500,000.00~~ **\$750,00.00.**

- (4) The fee for any single project shall not exceed ~~\$100,000.00~~ **\$150,00.00.**

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



STAFF REPORT

Town Council
April 6, 2021

Title:

Resolution, to award Contract IFB #21-07, Legal Advertisement Services.

Staff Contacts:

Viki Wellershaus, CMC, Town Clerk
Phone: 703-435-6804
Email: viki.wellershaus@herndon-va.gov

Gerald Amacker, Purchasing Agent
Phone: 703-435-6813
Email: gerald.amacker@herndon-va.gov

Background:

Section §8.01-324 of the Code of Virginia mandates which newspapers may be used for legal notices and publications. Legal advertisements for the Town of Herndon must be published in a newspaper that meets the requirements listed in the referenced state code section.

IFB #21-07, Legal Advertisement Services, was advertised on the Town of Herndon's website and eVA Commonwealth of Virginia procurement website on February 10, 2021. Staff also emailed IFB packets to 26 contacts at local newspapers for their information and potential responses.

Sealed bids were requested by March 10, 2021 and were opened on that date. Two bids were received:

The Fairfax County Times \$3.55 per column/inch

The Washington Post Daily Rate: \$11.88 per line
Sunday Rate: \$16.25 per line
Online Fee: \$30.00 for 30 days

The term of the contract is one (1) year from the date of the award of contract, with four (4) twelve-month renewal options.

Staff Report
Legal Advertising Services Contract
April 6, 2021
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The Fairfax County Times was found to be the lowest responsive and responsible bidder. An affidavit filed from the Circuit Court was provided by The Fairfax County Times showing that the newspaper met criteria in Section §8.01-324 of the Code of Virginia.

Fiscal Impact:

Actual costs depend on the volume of legal advertisements for the fiscal year.

Staff Recommendation:

Award of contract IFB #21-07, Legal Advertisement Services, for the town's legal advertising services to **The Fairfax County Times**, at a rate of \$3.55 per column/inch.

Attachments:

1. Draft resolution
2. Affidavit
3. Code of Virginia §8.01-324

Prepared and Approved by:



Viki Wellershaus
Town Clerk



Gerald W. Amacker
Purchasing Agent

TOWN OF HERNDON, VIRGINIA

RESOLUTION

April 13, 2021

Resolution- to award Contract IFB #21-07, Legal Advertisement Services.

WHEREAS, the Code of Virginia Section §8.01-324 mandates which newspapers may be used for legal notices and publications; and

WHEREAS, the Invitation for Bid was posted on the Town of Herndon website and eVA Commonwealth of Virginia procurement website on February 10, 2021 to obtain the services of a qualified publication specializing in publishing legal notices in general circulation newspapers in the Town of Herndon; and

WHEREAS, to maximize the fullest competition, IFB packets were emailed to 26 contacts at local newspapers for potential responses; and

WHEREAS, two bids were received on March 10, 2021:

Newspaper	Cost
<u>The Fairfax County Times</u>	\$3.55 per column/inch
<u>The Washington Post</u>	Daily Rate: \$11.88 per line Sunday Rate: \$16.25 per line Online Fee: \$30.00 for 30 days

WHEREAS, The Fairfax County Times newspaper provided an affidavit filed from the Circuit Court showing that the newspaper met criteria in Section §8.01-324 of the Code of Virginia; and

WHEREAS, this contract includes a one-year term commencing on the date that the contract is fully executed, with four (4) one-year optional renewals; and

WHEREAS, it is the staff's recommendation to award the contract to the lowest responsive and responsible bidder, The Fairfax County Times.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards IFB #21-07 to **The Fairfax County Times**, for the town's legal advertising services, at \$3.55 per column/inch, which includes the display of the Town of Herndon seal and logo on each legal advertisement.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
CIVIL PROCESSING
2021 MAR 23 A 10:55
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

IN RE: WHIP IT MEDIA, successor in interest to

- THE GAZETTE d/b/a

CASE No. 07-8569

THE FAIRFAX COUNTY TIMES

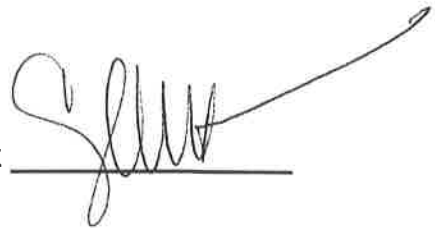
COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX, to-wit

Simmy Murdock, after first being duly sworn, deposes and says as follows:

1. Whip it Media is the successor in interest to The Gazette.
2. Whip it Media is the publisher of The Fairfax County Times.
3. I am the Advertising Sales Manager for The Fairfax County Times.
4. The Fairfax County Times continues to meet the requirements of Virginia Code Section 8.01-324 (B)

Simmy Murdock



Subscribed and Sworn to before me the 19 day of March, 2021, by
Simmy Murdock.

TAI HOU LEE
NOTARY PUBLIC
REG. #7222828
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MARCH 31, 2024

 03/19/21

§ 8.01-324. Newspapers that may be used for legal notices and publications.

A. As used in this section and throughout the Code, the terms "newspaper of record" and "newspaper of general circulation" are interchangeable and identical in meaning.

B. Whenever any ordinance, resolution, notice, or advertisement is required by law, regulation, or judicial order to be published in a newspaper, newspaper of record, or newspaper of general circulation, such newspaper, newspaper of record, or newspaper of general circulation, in addition to any qualifications otherwise required by law, shall:

1. Have a bona fide list of paying subscribers;
2. Have been published and circulated in printed form at least once a week for at least 50 of the preceding 52 weeks;
3. Provide general news coverage of the area in which the notice is required to be published;
4. Be printed in the English language; and
5. Have a periodicals mailing permit issued by the United States Postal Service (USPS). If the newspaper has such a mailing permit, it must publish the USPS Statement of Ownership (Form 3526) in such newspaper at least once per calendar year and maintain a copy of such form that is available for public inspection during regular business hours.

C. However, a newspaper that does not have a periodicals mailing permit issued by the USPS pursuant to subdivision B 5 may petition the circuit court for the jurisdiction in which ordinances, resolutions, notices, or advertisements are required to be published to be certified as a newspaper of record for that jurisdiction. Prior to filing the petition, the newspaper shall publish a notice of intention to file a petition pursuant to this subsection in another newspaper of record in the jurisdiction in which the petition will be filed. If no such newspaper exists, such notice of intent may be published in a newspaper in a neighboring jurisdiction. The court shall grant the authority for a period of one year upon finding that the newspaper (i) meets the requirements of subdivisions B 2, 3, and 4; (ii) employs a local news staff, reports local current events and governmental meetings, has an editorial page, accepts letters to the editor, and is, in general, a news forum for the jurisdiction in which authority is sought; and (iii) has an audit of printed circulation for a time period ending no more than 24 months prior to the filing of such petition certified by an independent auditing firm or a business recognized in the newspaper industry as a circulation auditor. Such audit shall provide a breakdown of such newspaper's circulation by zip code or jurisdiction. The authority shall be continued for successive one-year periods upon the filing of a copy of such newspaper's most recent audit of circulation, completed within the prior 24 months, and an affidavit certifying that the newspaper continues to meet the requirements of this subsection.

D. If a county with a population of less than 15,000 had regularly advertised its ordinances, resolutions, and notices in a newspaper published in the county that had a general circulation in the county, a bona fide list of paying subscribers, and a periodicals permit, and the newspaper continued to be published in the county and continued to have a general circulation in the county but failed to maintain its bona fide list of paying subscribers and its periodicals permit, any advertisement of ordinances, resolutions, or notices in the newspaper by the county shall be deemed to have been in compliance with this section.

E. If a locality determines that no newspaper meets the requirements of subsection B or C with regard to its jurisdiction, such locality may petition the circuit court for its jurisdiction

for authority to have such ordinances, resolutions, notices, or advertisements published in another printed medium. Such petition shall not be filed without a majority vote of approval by such locality's local governing body. The court shall grant such authority for good cause shown. Such authority shall be granted for one year and may be continued for successive one-year periods for good cause shown.

F. Any newspaper authorized by this section to publish ordinances, resolutions, notices, or advertisements shall (i) print such ordinances, resolutions, notices, or advertisements together under an identifying heading and such heading shall be in boldface letters no smaller than 24-point type and (ii) maintain at least three years' worth of print archives of such newspaper containing any such ordinance, resolution, notice, or advertisement and make such archives available to the public for inspection upon request.

G. In all cases in which an ordinance, resolution, notice, or advertisement is required to be published in a newspaper of general circulation, the newspaper shall (i) post the complete notice on the newspaper's website, if a website is published by such newspaper, where it shall be posted contemporaneously with the notice's first print publication and shall remain on the website for at least as long as the notice appears in such newspaper; (ii) include on its website homepage a link to its public notice section; and (iii) post the complete notice on a searchable, statewide repository website, established and maintained as a joint venture of the majority of Virginia newspapers as a repository for such notices, where it shall remain on such repository website for at least as long as it appears in the newspaper. Any notice published on a website pursuant to this section shall be accessible to the public at no charge.

H. An error in a notice placed on a newspaper website or statewide website, or temporary website outages or service interruptions prohibiting the posting or display of such notice, shall be considered harmless error, and proper legal notice requirements shall be considered met if the notice published in the newspaper otherwise complies with the requirements for publication.

Code 1950, § 8-81; 1977, c. 617; 1983, c. 297; 1989, c. 611; 1992, cc. 392, 537, 719; 2007, cc. [183](#), [603](#); 2019, c. [635](#).

STAFF REPORT

Town Council
April 6, 2021

Title:

Ordinance, to amend Chapter 46 (OFFENSES), Article II (Firearms, Crossbows, and Pneumatic Guns), to amend definitions and to create a new Section 46-60 (Possession of Firearms on Town Property), to prohibit the possession, carrying, or transportation of any firearms, ammunition, or components or combination thereof on Town property, in Town buildings or on certain other areas owned by the Town.

Staff Contact:

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Description:

The 2020 Virginia General Assembly adopted legislation which took effect on July 1, 2020 authorizing localities to adopt ordinances prohibiting firearms in certain circumstances.

A presentation was made at the September 15, 2020 work session of the Town Council wherein the Town Attorney detailed the provisions of the legislation and answered Councilmembers' questions. While there was consensus from almost every councilmember that they wished to receive more public input, there was not consensus to advance consideration of an ordinance at that time.

The Town Manager recently received a specific request to bring forward a draft firearms prohibition ordinance similar to Fairfax County's. While not identical to Fairfax County's, the ordinance before you is similar but tailored to Herndon.

§15.2-915 of the Code of Virginia authorizes any locality to prohibit the possession, carrying or transportation of firearms, ammunition, or components or any combination thereof in (i) any building, or part thereof, owned or used by the locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes; (ii) in any public park owned or operated by the locality, or by any authority or local governmental entity created or controlled by the locality; (iii) in any recreation or community center facility operated by the locality,

or by any authority or local governmental entity created or controlled by the locality; or (iv) in any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit.

The enabling legislation also allows for increased security measures, such as security guards or metal detectors, to prevent unauthorized access to those areas. The legislation further mandates that notice of the ordinance be posted at entrances to the areas where the prohibition is in effect, including at all building and park entrances, as well as appropriate places of ingress and egress to permitted events, events that would otherwise require a permit, and adjacent areas.

The proposed ordinance utilizes the enabling authority to its full extent. Firearms, ammunition, components or combination thereof would be prohibited in buildings, parks, recreation and community centers owned or used by the Town, or authorities and entities created or controlled by the Town. The prohibition would also be in effect at permitted events, events that would otherwise require a permit, and areas adjacent to those events, provided those events take place on a public street, road, alley, sidewalk or public right-of-way, or any other place of whatever nature that is open to the public. Appropriate signage must be posted in order to enforce the prohibition.

Exemptions are provided for

- *Sworn law enforcement personnel.*
- *Security personnel hired as employees or contracted by the town*
- *Active duty military personnel acting within the scope of their official duties.*
- *Individuals who are authorized to carry a concealed firearm pursuant to the Law Enforcement Officers Safety Act, 18 U.S.C. §§ 926B and 926C, as amended.*
- *Private security officers licensed by the Virginia Department of Criminal Justice Services providing security for a town-permitted event.*
- *The possession and carrying of weapons in a town building operating as a courthouse which is governed by the provisions of Va. Code § 18.2-283.1, as amended.*
- *Lawfully possessed firearm, ammunition, components or combination thereof that is stored out of sight in a locked private motor vehicle that is lawfully parked on town property or a public street.*

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- *Training and other activities of certain identified groups including Senior Reserve Officers' Training Corps program and intercollegiate programs.*
- *Activities of educational programs and events, including static displays and historical reenactments otherwise permitted.*

A violation is punishable as a class one misdemeanor.

Fiscal Impact:

Staff has not had the opportunity to research to determine the fiscal impacts of State law requirements pertaining to signage and security measures. Costs include those associated with installation, hardware, and expenses related to posting and removal of both permanent and temporary signage required under the ordinance.

Enhancements to physical security, including, but not limited to, security guards and metal detectors, may also be made based on Council guidance or threat assessments and staff recommendations to the Town Manager. If necessary, budgetary adjustments may be recommended.

Town Council Alternatives:

1. Adopt the proposed ordinance, as presented.
2. Defer consideration of the proposed ordinance until budgetary impacts are identified and confirmed.
3. Direct Town Manager to advertise a public hearing on the proposed ordinance to solicit public comment.

Attachments:

Draft Ordinance

Prepared and Approved by:



Lesa J. Yeatts, Town Attorney

1 **TOWN OF HERNDON, VIRGINIA**

2 **ORDINANCE**

3 **April 13, 2021**

4
5 **Ordinance– to amend Chapter 46 (OFFENSES), Article II (Firearms,**
6 **Crossbows, and Pneumatic Guns), to amend definitions and to**
7 **create a new Section 46-60 (Possession of Firearms on Town**
8 **Property), to prohibit the possession, carrying, or**
9 **transportation of any firearms, ammunition, or components or**
10 **combination thereof on Town property, in Town buildings or**
11 **on certain other areas owned by the Town.**

12
13 **BE IT ORDAINED** by the Town Council for the Town of Herndon, Virginia that:

- 14 1. Chapter 46 (OFFENSES), Herndon Town Code (2000), is amended as follows:

15 **CHAPTER 46 – OFFENSES**

16 **ARTICLE II. – FIREARMS, CROSSBOWS, AND PNEUMATIC GUNS**

17 ***

18 Sec. 46-56. Definitions

19 ***

20 ***Ammunition** means a cartridge, pellet, ball, missile or projectile adapted for use in a*
21 *firearm.*

22 ***

23 ***Sec. 46-60. Possession of Firearms on Town Property***

24 ***(a) Firearms, ammunition, or components or combination thereof prohibited in***
25 ***certain areas:***

26
27 ***(1) The possession, carrying, or transportation of any firearms, ammunition,***
28 ***or components or combination thereof is prohibited in the following areas:***

29
30 ***a. In any building, or part thereof, owned or used by the town, or by***
31 ***any authority or local government entity created or controlled by***
32 ***the town, for governmental purposes.***

33
34 ***b. In any public park owned or operated by the town, or any authority***
35 ***or local government entity created or controlled by the town.***

36
37 c. *In any recreation or community center facility operated by the*
38 *town, or any authority or local government entity created or*
39 *controlled by the town.*

40
41 d. *In any public street, road, alley, or sidewalk or public right-of-way*
42 *or any other place of whatever nature that is open to the public and*
43 *is being used by or is adjacent to a town-permitted event or an event*
44 *that would otherwise require a town permit. [For purposes of this*
45 *Section, town-permitted event and event that would otherwise*
46 *require a town permit include events permitted by an authority or*
47 *local government entity created or controlled by the town in whole*
48 *or in part.]*

49
50 e. *In buildings not owned by the town, or any authority or local*
51 *government entity created or controlled by the town, this Section*
52 *shall apply only to the part of the building used for a governmental*
53 *purpose and when such building, or part thereof, is being used for*
54 *a governmental purpose.*

55
56 f. *In parks located in the town that are owned or operated by or in*
57 *conjunction with one or more other localities, provided that all*
58 *participating localities enact an ordinance containing a prohibition*
59 *substantially similar to that imposed by Paragraph (1)b. above and*
60 *the governing body passes a resolution or other measure*
61 *agreeing to the application of each such ordinance within the parks*
62 *located in each such locality.*

63
64 (2) *Pursuant to this Section, the town may implement security measures that*
65 *are designed to reasonably prevent the unauthorized access of such*
66 *buildings, parks, recreation or community center facilities, or public*
67 *streets, roads, alleys, or sidewalks or public rights-of-way or any other*
68 *place of whatever nature that is open to the public and is being used by or*
69 *is adjacent to a permitted event or an event that would otherwise require*
70 *a permit by a person with any firearms, ammunition, or components or*
71 *combination thereof, such as the use of metal detectors and increased use*
72 *of security personnel.*

73
74 (3) *The provisions of this Section shall not apply to the following:*

75
76 a. *The activities of (i) a Senior Reserve Officers' Training Corps*
77 *program operated at a public or private institution of higher*
78 *education in accordance with the provisions of 10 U.S.C. § 2101 et*
79 *seq., or (ii) any intercollegiate athletics program operated by a*

public or private institution of higher education and governed by the National Collegiate Athletic Association or any club sports team recognized by a public or private institution of higher education where the sport engaged in by such program or team involves the use of a firearm. Such activities shall follow strict guidelines developed by such institutions for these activities and shall be conducted under the supervision of staff officials of such institutions.

- b. Sworn law enforcement personnel.
- c. Security personnel hired as employees or contracted by the town, or other local government entity created or controlled by the town in whole or in part, when such personnel are present and working in any building or other location set forth in Paragraph (1) and who are authorized to carry firearms as part of their duties.
- d. The activities of educational programs and events, including static displays and historical reenactments, conducted or permitted by the town or local government entity created or controlled by the town, when such educational programs and events involve the use or display of firearms that are not loaded with projectiles.
- e. Individuals who are authorized to carry a concealed firearm pursuant to the Law Enforcement Officers Safety Act, 18 U.S.C. §§ 926B and 926C, as amended.
- f. Active duty military personnel acting within the scope of their official duties.
- g. The possession and carrying of weapons in a town building operating as a courthouse shall be governed by the provisions of Va. Code § 18.2-283.1, as amended.
- h. An otherwise lawfully possessed firearm, ammunition, components or combination thereof that is stored out of sight in a locked private motor vehicle that is lawfully parked on town property or a public street.
- i. Private security officers licensed by the Virginia Department of Criminal Justice Services providing security for a town-permitted event.

124 *(4) Notice of ordinance.*

125
126 *a. Notice of this ordinance shall be posted (i) at all entrances of any*
127 *building, or part thereof, owned or used by the town, or any*
128 *authority or local governmental entity created or controlled by the*
129 *town, for governmental purposes; (ii) at all entrances of any public*
130 *park owned or operated by the town, or any authority or local*
131 *governmental entity created or controlled by the town; (iii) at all*
132 *entrances of any recreation or community center facilities operated*
133 *by the town, or any authority or local governmental entity created*
134 *or controlled by the town; and (iv) at all entrances or other*
135 *appropriate places of ingress and egress to any public street, road,*
136 *alley, or sidewalk or public right-of-way or any other place of*
137 *whatever nature that is open to the public and is being used by or is*
138 *adjacent to a permitted event or an event that would otherwise*
139 *require a permit.*

140
141 *b. Notice of this ordinance shall be posted at all entrances of any public*
142 *park owned or operated by a park authority that was created or is*
143 *controlled by the town in conjunction with one or more other*
144 *localities, provided that all participating localities have enacted an*
145 *ordinance containing a prohibition substantially similar to that*
146 *imposed by Paragraph (1)b. above and the governing body has*
147 *passed a resolution or other measure agreeing to the application of*
148 *each such ordinance within the parks located in each such locality.*

149
150 *(5) Violation of this section (46-60) shall constitute a class 1 misdemeanor.*

151 ***

152
153 2. This ordinance shall be effective on and after the date of its adoption.