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**HERNDON TOWN COUNCIL  
Work Session  
Tuesday, June 1, 2021**

Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments, Mayor Olem has stated that the June 1, 2021 Herndon Town Council Work Session would be by electronic means. The meeting was broadcast and recorded through Cisco Webex and details for the meeting were made available to the public on Thursday, May 27, 2021. In attendance electronically were:

- Mayor Sheila A. Olem, presiding;
- Vice Mayor Cesar del Aguila;
- Councilmember Signe Friedrichs;
- Councilmember Sean M. Regan; and
- Councilmember Jasbinder Singh.
- Councilmembers Naila Alam and Pradip Dhakal were absent from the Webex.

**1. CLOSED MEETING**

**Roll Call & Determination of Quorum**

Mayor Olem called the June 1, 2021 work session to order. All members were present electronically, except for Councilmembers Alam and Dhakal who were absent, with Mayor Olem presiding.

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Mayor Olem stated that the Council had a need to go into a closed meeting and that the Town Clerk had posted and filed the appropriate notices, including those for the meeting to be held electronically.

On motion of Councilmember Singh, seconded by Councilmember Regan, and carried by 5-0 roll call vote by electronic means, the Herndon Town Council went into Closed Meeting at 5:34 p.m., under Section 2.2-3711(A)(1) of the Code of Virginia, to discuss the performance of a specific public employee of the town relative to annual review. Following the closed meeting, the Council will reconvene for the remainder of the previously scheduled work session agenda.

Vote: Councilmembers Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Dhakal were absent.

On motion of Councilmember Regan, seconded by Councilmember Friedrichs, and carried by 5-0 roll call vote by electronic means, the Herndon Town Council reconvened in public session at 6:33 p.m.

Vote: Councilmembers Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Dhakal were absent.

On motion of Vice Mayor del Aguila, seconded by Councilmember Friedrichs, and carried by 5-0 roll call vote by electronic means, the Herndon Town Council approved the following Certification of Closed Meeting.

Vote: Councilmembers Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Dhakal were absent.

**Certification of Closed Meeting**

**WHEREAS**, the Town Council of the Town of Herndon has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

**WHEREAS**, Section 2.2-3711 of the Code of Virginia requires a certification by this Town Council that such Closed Meeting was conducted in conformity with Virginia law.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Herndon hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification

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resolution applies, and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed, or considered by the Town Council.

**VOTE:**

**Ayes – 5**

**Nays – 0**

**ABSENT DURING VOTE: 2**

**ABSENT DURING MEETING: 2**

**RECESS**

At 6:38 p.m., Mayor Olem called a brief recess; and at 7:00 p.m., the meeting reconvened electronically on Webex, all members present, and with Mayor Olem presiding.

**WORK SESSION**

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Elizabeth Gilleran, Director of Community Development; Scott Robinson, Director of Public Works; Tammy Chastain, Deputy Director of Public Works; John Irish, Deputy Director of Public Works; Lauri Sigler, Deputy Town Attorney, and Amanda Kertz, Chief Deputy Town Clerk.

**ANNOUNCEMENTS**

The Chief Deputy Town Clerk welcomed those listening to the June 1, 2021 work session and stated that night's regularly scheduled Herndon Town Council meeting was a virtual meeting, which was being conducted electronically pursuant to:

- ❖ Virginia Code Section 2.2-3708.2, as amended;
- ❖ the Governor's Executive Orders, as amended; and
- ❖ in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments.
- Proper notice of the electronic meeting was provided in accordance with the Code of Virginia;

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- 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**

### **2. Roll Call & Determination of Quorum**

Mayor Olem called the June 1, 2021 work session to order at 7:00 p.m. and asked the Chief Deputy Town Clerk to call the roll for attendance. Mayor Olem asked each member of Council to respond by clearly stating their name and indicating they were present.

Following the roll call for attendance, Mayor Olem confirmed there was an electronic quorum present. All members were present electronically, except for Councilmembers Alam and Dhakal, who were absent, with Mayor Olem presiding. As the Deputy Town Clerk stated, the meeting that evening was being conducted pursuant to the appropriate laws associated with the COVID-19 pandemic disaster.

Mayor Olem asked Council to observe meeting decorum by showing their hand to be recognized by the chair for comments and stating their last names before providing comments and when making or seconding motions. She reminded those participating to follow the town's Meeting Guidelines that were used for all government meetings to maintain good order, which included: refraining from participation unless and until recognized by the chair; being respectful in comments; refraining from threatening or intimidating language; profane, vulgar, obscene, or threatening remarks were not permitted; and attacks on the character, motive, or other harmful remarks against individual members of Council, town staff, or the public would not be tolerated.

### **3. Comments from the Town Manager**

Mayor Olem recognized the Town Manager for his comments and updates.

### **4. Pandemic Update**

The Town Manager stated they were in a re-opening phase, and people were welcome in town facilities without a mask, if they were vaccinated and two weeks from their final dose of vaccination, pursuant to current state guidance. The Town Manager stated there would be a Fourth of July observance and fireworks in the town.

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The Town Manager also announced the July Council meetings would be back in person, and the first July work session would be held at the Herndon Community Center in a large meeting room. The meeting would be on video for the website, and they were looking into streaming it as well. The public hearing would be back in the Council Chambers, and they were preparing. The Town Manager stated this was another step toward normalcy.

Mayor Olem provided positive comments about the Fourth of July fireworks.

**Questions from Council**

There were no questions from Council.

**5. Council Initiatives Update**

The Town Manager provided an update about the Council Initiatives. He indicated they were currently working on the Multicultural Committee. Councilmember Dhakal sent in a concept and staff was going to get information back out to Council for a possible discussion in July.

The Council Initiatives Spreadsheet is on file in the Town Clerk's office.

**Questions from Council**

Councilmember Friedrichs asked if they could remove the gun initiative from the strategic plan list. She did not think it was originally in there.

The Town Manager stated that would be a Council prerogative. He indicated that since they were discussing it later that night it would be a good time to have that conversation.

**COMMENTS FOR THE RECORD & DISCLOSURES**

Mayor Olem asked the Chief Deputy Town Clerk whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and the Chief Deputy Town Clerk stated that she had received comments on the discussion item for the proposed gun ordinance that evening's meeting. All comments were provided to Council. The Clerk did not receive any disclosures from Council on any item listed on that evening's agenda.

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## **PUBLIC HEARINGS**

6. **Ordinance 21-O-12, to approve and authorize the Mayor to sign a new five-year lease for space on the Third Street water tower and ground space at the site to New Cingular Wireless PCS, LLC d/b/a AT&T Mobility Corporation.**

Mayor Olem recognized the Deputy Director of Public Works, who presented the staff report dated June 1, 2021, which is on file in the town Clerk's office.

The Deputy Director of Public Works stated the town proposes to enter into a new Deed of Lease for a term of five-years with an option for one five-year extension with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility Corporation, who are current tenants at the Third Street water tower. That lease expired on May 31, 2021. The new proposed lease would be effective June 1, 2021.

The town would lease portions of the property consisting of approximately 312 square feet on the ground, and space on the tower for the placement of lessee's antennas and equipment. The monthly lease amount would be \$3,457.65 and subject to a three percent annual escalation provided for in the Deed of Lease.

Staff recommended Council approve the proposed new five-year Deed of Lease with the option for one five-year extension with Cingular Wireless PCS, LLC d/b/a AT&T Mobility Corporation, at the Third Street Water Tower.

There were no questions of Council.

## **GENERAL**

7. **Ordinance 21-O-13, to approve and authorize the Mayor to sign a new two-year Lease Agreement between the Town and Evince Analytics, Inc., for space at 397 Herndon Parkway.**

Mayor Olem recognized the Town Manager, who presented the staff report dated May 18, 2021, which is on file in the Town Clerk's office.

The Director of Public Works stated this ordinance was approving and authorizing the Mayor to sign a new two-year lease Agreement with Evince Analytics for 397 Herndon Parkway, where they have been tenants since 2012. The current lease would expire on June 30, 2021. Evince Analytics is a consulting firm specializing in software design and information systems.

The proposed new leased area was 1,932 square feet of office space as well as access to shared parking. This space was smaller than the 3,512 sq. ft. of space they currently leased. The term would be for two (2) years from July 1, 2021

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through June 30, 2023, with an option for extension of the term for one (1) year upon mutual agreement of both parties. The option would extend the lease from July 1, 2023 through June 30, 2024.

The rent would be \$18/SF in the first lease year and three percent escalation in each subsequent year of the base term. Total rent paid to the town would be \$34,776 for July 1, 2021 through June 30, 2022, \$35,819 for July 1, 2022 through June 30, 2023. Rent for the extension period would be mutually agreed upon prior to executing the option. Staff recommended approval.

There was a question and answer session between Councilmember Singh and the Director of Public Works about the rent price and calculation. Councilmember Singh provided a follow-up question about whether the change in office space demand was taken into account, and the Director of Public Works indicated it was a shorter-term lease with three percent escalation and there would not be too much divergence in a short-term lease. Councilmember Singh provided follow up commentary on rent prices. He asked if staff looked at that how rent might go up, and the Director of Public Works indicated they had.

Councilmember Friedrichs asked about the section of the building no longer being rented and whether it could be rented to someone else. The Director of Public Works indicated the broker under contract was talking to potential renters and he was hopeful it would turn over.

Following discussion and with the concurrence of Council, Mayor Olem asked staff to place this item on the Consent Agenda for next week's meeting.

**8. Ordinance 21-O-14, to approve and authorize the Mayor to sign a Lease Agreement between the Town and The Elden Street Players d/b/a NextStop Theatre Company, for space at 397 Herndon Parkway.**

Mayor Olem recognized the Director of Public Works, who presented a staff report dated June 1, 2021, which is on file in the Town Clerk's office.

The Elden Street Players (NextStop) has leased space for storage at 750 Center St. (Artspace) for many years. With the transfer of the property to Comstock Partners pursuant the PPEA Comprehensive Agreement for redevelopment of the property 750 Center Street was licensed back to the town by Comstock in order to maintain ArtSpace and the associated uses. The town in turn sublicensed the space to the current tenants (Arts Herndon and NextStop) to maintain their current spaces. The sublicense with NextStop would expire in December. Recognizing that they will have to relocate in any case, as the building is slated for demolition, NextStop is requesting space at 397 Herndon Parkway for the storage that has been located at the Artspace location.

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The lease term would be July 1, 2021 to June 30, 2022. The rent for this space is proposed to be \$1.00, consistent with their current 397 lease for rehearsal space and other similar leases on Town property. The rent amount was consistent with other leases for governmental entities at this location.

Staff recommended the Mayor and Council adopt the attached ordinance as proposed.

Councilmember Friedrichs confirmed with the Director of Public Works that it was about a 300 square foot space.

Following discussion and with the concurrence of Council, Mayor Olem asked staff to place this item on the Consent Agenda for next week's meeting.

9. **Resolution numbers 21-G-49 through 21-G-52, to ratify Temporary License Agreements between the Town of Herndon and Green Lizard Cycling (21-G-49), Mile 20 at Mediterranean Breeze (21-G-50), Russia House Restaurant (21-G-51), and Zeffirelli Ristorante Italiano (21-G-52) for use of public property or public right-of-way for temporary outdoor dining.**

Mayor Olem recognized the Town Attorney, who presented a staff report dated June 1, 2021, which is on file in the Town Clerk's office.

These licenses were a continuation of the town's efforts to assist Town businesses in the aftermath of COVID-19 by offering Temporary Outdoor Dining Permits with streamlined requirements for the approval process. Under standard town procedures, requests for a license to use the town sidewalks, streets or parking lots, must be approved by the Town Council after a public hearing, causing the entire process to take several months before a license is issued.

The Town Manager was authorized to approve and sign these agreements pursuant to Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended. Such documents were subject to final consideration and ratification by the Town Council at its next available Public Hearing.

The new Outdoor Dining License Agreements that have been signed by the Town Manager would expire on November 30, 2021, but were otherwise subject to all applicable town, state, and federal laws which may affect the validity of these agreements.

Council is requested to consider ratification of the four (4) Temporary License Agreements for Temporary Outdoor Dining on Town property to finalize their approval for Green Lizard Cycling; Mile 20 at Mediterranean Breeze; Russia House Restaurant; and Zeffirelli Ristorante Italiano.

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Staff recommended that Council approve the resolution(s) as proposed.

Councilmember Regan asked at what point they should think about making this idea more permanent. The Town Manager indicated it would depend on ABC laws post-pandemic. He indicated he wanted to be ready to act if they do liberalize this and reiterated it would depend on ABC. There was further discussion between the Town Manager and Councilmember Regan about future decisions related to outdoor dining.

Councilmember Friedrichs added that some other municipalities had a “sip and stroll” and that idea had been brought to her. The Town Manager indicated a municipality would have to set up a zone for special ABC dispensation. He indicated they did look at that, and the area they were struggling with was Elden Street. He said they were willing to look at it and consider in a conceptual way.

The Town Attorney stated new legislation would take effect July 1, 2021.

Following discussion and with the concurrence of Council, Mayor Olem asked staff to place this item on the Consent Agenda for next week’s meeting.

**10. Resolution 21-G-53, to ratify a Temporary Sublicense Agreement between the Town of Herndon and Messi Kuhns, LLC dba Sully’s Pour House for use of public property or public right-of-way licensed to the Town for temporary outdoor dining.**

Mayor Olem recognized the Town Attorney, who presented a staff report dated June 1, 2021, which is on file in the Town Clerk’s office.

This sublicense was a continuation of the town’s efforts to assist Town businesses in the aftermath of COVID-19 by offering Temporary Outdoor Dining Permits with streamlined requirements for the approval process, which would ordinarily take months.

This resolution was to ratify a Temporary Sublicense Agreement between the town and Sully’s Pour House for use of a portion of the parking lot located directly behind the business at 754 Elden Street. The parking lot, in which Sully’s has and wants to maintain a temporary outdoor seating area, was now owned and licensed to the town by Comstock by Agreement dated December 15, 2020. This made it necessary to create a sublicense specifically for Sully’s.

The Sublicense Agreement signed by the Town Manager would expire on November 30, 2021, or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant’s business, whichever occurred first.

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Staff requested Council consider ratification of the Sublicense Agreement for Temporary Outdoor Dining on town licensed property to finalize its approval.

Staff recommends that the Town Council approve the Resolution(s) as proposed.

Councilmember Friedrichs asked if this would expire if Comstock started construction.

The Town Attorney indicated they could end the agreement. The Town Manager asked if they had thirty days on it, and the Town Attorney stated, for cause, she believed it was ten days after notice. She thought it was highly unlikely it would end before November 30, 2021, but the town does have a right of exit out of the license.

Following discussion and with the concurrence of Council, Mayor Olem asked staff to place this item on the Consent Agenda for next week's meeting.

**11. Resolution 21-G-54, to ratify an Agreement for Adjustment of Water & Sewer Facilities pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Commonwealth of Virginia, Department of Transportation (VDOT).**

Mayor Olem recognized the Deputy Director of Public Works, who presented a staff report dated June 1, 2021, which are on file in the Town Clerk's office.

The Deputy Director of Public Works indicated this was a resolution to ratify an agreement previously signed by the Town Manager under the Continuity of Government Operations.

The Deputy Director of Public Works said this tied into the VDOT East Spring Street Widening Improvements project. As part of the Project, VDOT would have to relocate and adjust the town's water and sewer facilities. The agreement for Adjustment of Water & Sewer Facilities provided permission to VDOT and its construction contractor to relocate and adjust the town's facilities in accordance with the construction plans. The town could monitor during the process. The project would be responsible for bearing 100% of cost of the water and sewer adjustments so there was no additional cost to the town.

Council needed to consider ratification of the Agreement for Adjustment of Water & Sewer Facilities to VDOT to finalize its approval in order to facilitate the construction of the Project.

There were no questions from Council.

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Following discussion and with the concurrence of Council, Mayor Olem asked staff to place this item on the Consent Agenda for next week's meeting.

**12. Resolution 21-G-55, to award Contract #B-21-01, Herndon Metrorail Intermodal Access Improvement Project**

Mayor Olem recognized the Deputy Director of Public Works, who presented a staff report dated June 1, 2021, which is on file in the Town Clerk's office.

The Deputy Director of Public Works indicated this was another contract for the construction of the Herndon Metrorail Intermodal Access Improvement Project (Bus Bays Project). This project would improve the area at the end of the walkway to the pavilion from Herndon Parkway and provide two drop off areas for buses and two drop off areas for vehicles. Additionally, there would be pedestrian access improvements to allow those on the north side to cross over to the pavilions. It would also include a signal and shelters.

On March 19, 2021, Contract #B-21-01, Herndon Metrorail Intermodal Access Improvement Project, was advertised. A pre-bid conference was held on March 25, 2021, but no firm attended it. On April 15, 2021, a public bid opening was held, and the apparent lowest bidder, Arthur Construction Co., Inc., was found to be responsive and responsible.

Funds to support this contract were available in the Capital Projects Account #015-0886-491790. Reimbursement of funds up to \$1,757,880 or 100% of total construction costs was available through a Virginia Department of Transportation (VDOT) agreement between the Town of Herndon and VDOT and General Obligation Bonds.

Staff recommended Contract #B-21-01, Herndon Metrorail Intermodal Access Improvement Project, be awarded to Arthur Construction Co., Inc. for \$1,757,880. Staff also recommended a contingency in the amount of \$183,155, approximately 10.4% of the contract amount, to be authorized.

Councilmember Singh voiced safety concerns about the Bus Bays being on Herndon Parkway. He wondered whether that issue was simulated to see if anything could be done for safety purposes. The Deputy Director of Public Works indicated the plan would not require vehicles to back up to exit the drop off areas. Councilmember Singh asked additional questions about the flow of traffic, and the Deputy Director indicated they were parallel parking spaces.

Mayor Olem asked if it was like the bus bays in Reston at Target. The Deputy Director of Public Works clarified the buses and vehicles pull off area was big enough to sit at the curb out of the travel lanes, and when they exit the pull off, they would yield to oncoming traffic but not reverse.

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Following discussion and with the concurrence of Council, Mayor Olem asked staff to place this item on the Consent Agenda for next week's meeting.

13. **Resolution 21-G-56, to initiate consideration of a Zoning Ordinance Text Amendment ZOTA #21-03 to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), and other articles as deemed necessary and appropriate to revise regulations governing accessory dwelling units.**

Mayor Olem recognized the Director of Community Development, who presented a staff report and PowerPoint dated June 1, 2021, which are on file in the Town Clerk's office.

The Director of Community Development reviewed initiating resolutions and the process for zoning text amendments. If approved, this initiating resolution would allow ZOTA #21-03 to be brought to a public hearing of the Planning Commission for their consideration and recommendation. Following Planning Commission review, this text amendment would return to Council for final action. The Director of Community Development further reviewed that the initiating resolution came from Chairman Romeo's formal request on April 29, 2021. The initiating resolution was for consideration of ZOTA #21-03 to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), and other articles as deemed necessary and appropriate to revise regulations governing accessory dwelling units. Additional information was available in the staff report which is on file in the Town Clerk's office.

Staff recommended Council approve the initiating resolution for ZOTA #21-03 in accordance with alternative 1.

Councilmember Singh provided comments about the zoning district and regulations. He also said, "the current language is not okay with me," and asked if they were planning to give the Planning Commission any guidance or limits in which to make decisions. The Director of Community Development indicated that, with this initiating resolution for this amendment, it was written so the Planning Commission could make recommendations to the Zoning Code for the specified articles and for other sections of the zoning code as necessary. She thought some of Councilmember Singh's concerns were ones the Planning Commission shared, and they would probably be bringing forward a very different ordinance than the one before Council that day regarding accessory dwelling units, what is required, and the process. They still want to work through the process and do additional research. They had already done some research into what other local jurisdictions had done and were trying to ascertain best practices and what was appropriate for the town.

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Councilmember Singh stated his question was if staff provided the Planning Commission with guidance. The Director of Community Development indicated staff provided them with some research, presentations, and sticking points. She confirmed they were providing staff support.

Councilmember Regan indicated they had all been having some trouble with this and that may be because the ordinance was passed in the 1980s and times had changed. He was not sure it created the outcomes they hoped for. He was encouraged that the Planning Commission would be thinking about what other places had done and what had happened.

## **CONSENT**

14. **Resolution 21-G-57, to reappoint Eric Boll to the Architectural Review/Historic District Review Boards; and**
15. **Resolution 21-G-58, to reappoint Kevin Moses to the Herndon Planning Commission.**

There were no questions on these items.

## **DISCUSSION**

### **16. Gun Ordinance (Town Attorney)**

Mayor Olem recognized the Town Attorney who presented a PowerPoint dated June 1, 2021, which is on file in the Town Clerk's office.

The Town Attorney indicated this would be a status update and check-in with Council to make sure they were moving forward in the way Council wanted. She would provide a quick review and let Council know which questions staff needed guidance on.

The Town Attorney reviewed the enabling legislation adopted by the General Assembly that authorizes any locality to adopt ordinances to prohibit firearms on that locality's property. This legislation was codified in Virginia State Code Section 15.2-915(E) and became effective on July 1, 2020. She stated that, to date, several localities including Arlington, Loudoun, and Fairfax County in Northern Virginia had adopted ordinances as well as other localities throughout the state. The ordinance brought forward for Council consideration in April tracks the language of Virginia Code Section 15.2-915(E) and is similar to the language adopted by Fairfax County.

The Town Attorney indicated Council reviewed the ordinance on April 6, 2021 at a work session. In September of 2020, the former Council also had a general

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discussion about gun legislation. On April 13, 2021 at a public hearing, the ordinance was deferred to allow for fiscal analysis on May 6, 2021 during the strategic planning meeting. It was one of four items heard that evening because the Chief of Police could testify. Council gave it high priority and a number of Councilmembers voted for it to move forward.

Public input in the form of written comments were received for the September 2020 Council work session and for the April 6, 2021 and April 13, 2021 meetings. They continued to receive comments, but there had not yet been an opportunity for citizen comments at a public hearing.

Staff needed guidance to determine if any further information was needed to move the Ordinance 21-O-10 forward. If no further information was needed, they needed preference for scheduling date(s) of the ordinance for public hearing(s). The Town Attorney reviewed potential dates presented in the PowerPoint. Staff wanted to know Council's preferences for how quickly they want it on an agenda and whether they need more information before moving forward with this matter.

### **Summary of Council Discussion**

Councilmember Friedrichs supported moving forward with public hearings. She was unsure if the dates would work for her but thought sooner was better. Councilmember Friedrichs asked if they could have a closed session for legal advice at the next work session. She had some concerns about what they were doing and how they were doing it and wanted Council to understand all ramifications.

The Town Attorney submitted that any closed meeting would be subject to the full Council's approval and Town Manager on that particular issue. Assuming there was an exemption that applied, she would be happy to conduct a closed meeting, but she would need to know more. She believed Councilmember Friedrichs asked for legal advice, which was an exemption.

Councilmember Friedrichs stated she discussed this with the Town Attorney but did not act. She felt they needed to hear legal advice regarding some of the issues to make decisions.

Councilmember Singh indicated he was on the fence. He said, "here we have a proposed regulation, a proposed ordinance where it is not clear that we have a gun violence issue in this town, and the Chief has said that just putting up the sign is not going to prevent people who really want to do the damage." Given that context, he indicated he wanted to see how other places looked at risks, what they considered, and what they did. He thought the state, in approving the ordinance, must have considered intent and real incidences in communities where it was an issue. He needed to know more to decide.

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Mayor Olem stated the Town of Blacksburg was the only town mentioned, or that she heard of, with an ordinance.

Vice Mayor del Aguila said he wanted to remind them a majority of Council voted to keep this a priority and put it on the public input schedule. He agreed with Councilmember Friedrichs about moving quickly. Vice Mayor del Aguila said there was another announcement of shootings. He said it would not solve and prevent everything but was a step to a more secure town in terms of facilities, parks, and the community. He wanted to move quickly and said July and August tended to be when people were away. Vice Mayor del Aguila said he was trying to balance urgency with giving people enough time, given that people were probably on vacations. He was open to an August/September timeframe. Vice Mayor del Aguila reiterated moving forward quickly but wanting to give more time for input. He reminded them again that the majority voted to move forward to have a public hearing.

Councilmember Regan did not have comments at that time.

Mayor Olem asked what problem the ordinance would solve. She indicated that, according to the Chief of Police, they did not have a problem with guns in their public buildings or public spaces. Mayor Olem provided comments about two shootings while living in Herndon, and she did not recall any in town buildings or on town property.

Councilmember Friedrichs thought they were all concerned about gun violence. She wanted to have public hearings but thought August was possibly the worst month because of summer vacations. She suggested July and September. Councilmember Friedrichs thought things would come up in the July public hearings and allow time for research and separating the two would help them figure out what the ordinance would say. Councilmember Friedrichs said Vice Mayor del Aguila asked the Town Attorney to present the Fairfax County ordinance to Council for discussion. She indicated it was hard to come up with amendments without knowing what they did or did not want to afford. She thought public hearings would solidify better understanding of what residents want. Councilmember Friedrichs said she would want to exempt concealed carried from this ordinance given discussions she had. She thought when they said they are for or against guns they missed nuance, and she wanted people to think through more than it being an ordinance for or against guns. She thought they needed more discussion about contents, purpose, and cost. Councilmember Friedrichs indicated she was in favor of gun ordinances but was unsure of what they were getting for the expenditure. She also said that was why she was for the closed session.

Councilmember Regan indicated he looked at his notes from the May Strategic Initiatives meeting and, like the Town Attorney said, there was consensus to move this forward. He thought they should do that. He believed there were some

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sophisticated legal issues there involving liability, and he indicated Councilmember Friedrichs' idea for a closed session idea made sense to him. He thought they should try to meet the threshold for that and keep this moving forward. He indicated it was important, they should not kick it down the road, and should get it on the calendar. Councilmember Regan thought many of them wanted to have the conversation regardless of where they were on the issue.

Councilmember Singh said he was reading an article on the Second Amendment by a professor at the University of Baltimore and he talked about the Heller decision in Washington, D.C. where they enacted a law which said you cannot have guns in home, and the Supreme Court invalidated that. Councilmember Singh indicated that Justice Scalia said they were just talking about someone keeping guns at home for their safety "not really talking about anybody can carry a gun anywhere for whatever purpose or some language like that." Councilmember Singh said the implication was, they have not spoken about carrying a gun anywhere or in public buildings. Councilmember Singh said that decision would come later. Councilmember Singh said, "for those people who say that you are taking away our Second Amendment rights, that is not...they are not right on that." He said he could share the article with the Town Attorney and they could "then explain to the people that your Second Amendment rights are not violated, because I must have gotten at least ten emails, 'what is your position on Second Amendment' and I think this is an issue so the people know that their rights are not being taken, they are sort of assuming they have the rights, but that is not true." He thought for the schedule, they should let the Town Attorney answer some of the questions and spend some time with it. Councilmember Singh supported the August/September timeframe.

Councilmember Friedrichs asked for clarification about what "moving it forward" meant.

Mayor Olem agreed. She said they did not have an ordinance. In the meetings, she heard about banning guns on public property parks, public events, and buildings. She said they had not discussed how they would enforce or if they have to enforce if they have these rules. She provided comments about restaurants having to make similar decisions about smoking and non-smoking areas and infrastructure. Mayor Olem thought that was where they were. She indicated they needed to know how they would have the infrastructure to take care of whatever they passed, what the problem was, and what it was going to do.

Vice Mayor del Aguila thought they were following Fairfax County's initial ban for buildings, property, and parks and then defining a period where they either pass it or pass it after signs were posted. He said they were not talking about hardening buildings at this stage, and the initial ordinance was to start with buildings and parks and then define a timeframe for when it would roll out and be enforceable. To Councilmember Singh's point, he was comfortable with giving more time for comments. Vice Mayor del Aguila that the message was starting

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with these items. He said they would need notice and signs before enforcing. He did not think it was complex and backlash and other things could be discussed and considered. For him, it was a safety and awareness issue and educating people on the ordinance.

Councilmember Friedrichs asked if Vice Mayor del Aguila was saying to put out an ordinance with these things and then have public comment. Vice Mayor del Aguila confirmed. Councilmember Friedrichs followed up by asking if he was saying not to hear public comment first and then write the ordinance. Vice Mayor del Aguila confirmed.

The Town Attorney said they did defer the ordinance that was previously on Council's agenda. That ordinance could come back in a different form, but she would submit that in order to move forward and resume the discussion, that it would be prudent to start with the ordinance as it existed in April and pick and choose what language Council did not want. She stated a lot of the language came straight from the code, so they did not have too much to decide, but there were things they could decide and perhaps the citizens who comment would guide the discussion. She also stated that in order to have the discussion at a public hearing, she would submit that it was best practice to have an ordinance already, as a baseline, particularly where there is state enabling authority for what they were doing.

Councilmember Regan said, to follow up on what Mayor Olem and the Town Attorney said, it seemed there was a path to bring back the wording they looked at previously. He thought they all wanted to discuss and digest those things but that was the framework. He did not think a majority liked it exactly as it was at their Strategic Planning Meeting, but it was a reasonable structure to frame the discussion and go forward with a reasonable timetable.

Vice Mayor del Aguila said things could be augmented from the public hearings. He said they did not expect the public to help them write it. He said they were giving them the straw man template of what Council wanted, and they could comment on that.

Councilmember Friedrichs said she heard two things and was unsure which one they were advising staff to do. She asked for clarification on what they were going to do with signs and the ordinance and whether they were the same thing. She asked what they were asking staff to write. She hoped they were going to take public comments and help staff write it.

Mayor Olem was unsure of what they wanted to go forward. She brought up metal detectors and asked if they would have those or not. She indicated that was what they talked about, and she believed that was on the ordinance they discussed.

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The Town Attorney indicated that the manner in which the locality elected to enforce its gun prohibition ordinance was up to them, but to be enforceable, the state code required clear signage. She indicated the ordinance would not be effective or enforceable until signs were up. It would not tell them what kind of signs they could have or where they would need to be. It also did not require magnetometers or metal detectors. That was something that would come after the language of the ordinance had been adopted and a matter of administratively carrying out Council's desires.

Vice Mayor del Aguila said to the Town Attorney's point, none of them were prepared to spend three million dollars. He indicated they were starting with small steps and the MVP. He said just through signage they would be letting people know that office buildings and parks are safe zones. He said this could be brought back based on behaviors for additional requirements in the future. He thought they could all get behind signs, education, and public awareness. That's where he wanted the ordinance to focus. He agreed there were other long-term items on the road to a perfect plan. He reiterated launching the MVP and going from there.

The Town Attorney said where signs might go or whether magnetometers were used or not would not be in the language of the ordinance. That would be in the discussion and the direction to the Town Manager of how he is to direct staff to administer whatever was adopted. She suggested one point of clarification, for her, would be that they bring back the ordinance as it existed in April of that year and Council, after the public hearings, then decide specific language of the ordinance. Further discussion might be around enforcement of the ordinance.

Councilmember Singh agreed with the Town Attorney. He indicated that if they had the public hearings and the public was concerned about government buildings or events only, they might consider moving events. In that case, rather than signs, they may want metal detectors to address concerns at some locations. Councilmember Singh thought the public needed to be informed, and they needed to listen to what the public wants. He referenced his earlier question about whether they knew what considerations were taken into account by different towns who adopted ordinances. He wanted to have some sense of issues raised and how they were resolved.

Mayor Olem asked the Town Attorney if she had enough to move forward on. The Town Attorney indicated she was hearing agreement with the ordinance moving forward, as originally written, for discussion at two public hearings. She indicated she was not hearing consensus about when, but it would be okay between July and September.

Mayor Olem concurred that summer would get the least people including July and August. She suggested September would be good because people would be back from vacations.

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The Town Attorney asked Mayor Olem if she would ask for agreement on that to have a clear date.

Mayor Olem asked for concurrence from Council. All five members of Council in attendance concurred.

Vice Mayor del Aguila asked if they should set the date for the closed session Councilmember Friedrichs' mentioned.

The Town Attorney indicated she did want them to, and she would need more of an idea of what needed to be addressed. She suggested the second work session might work for a closed meeting.

Mayor Olem clarified they would have a work session and public hearing and then a closed session to get legal advice before the second work session.

The Town Attorney clarified it would be at the second work session before they adopt something. She indicated there were a lot of issues she could probably talk about.

Vice Mayor del Aguila indicated he would rather hear those before then.

Councilmember Friedrichs said she had a specific question for the Town Attorney.

The Town Attorney asked if they could push that to August for more research and being closer to the actual ordinance public hearings.

Councilmember Regan indicated he like the idea of doing it before the first public hearing.

Mayor Olem also suggested they could have two councilmembers meet with the Town Attorney for conferences.

The Town Attorney stated if they had any specific items they were concerned about, they could bring them to her ahead of time. She said that would be helpful.

Councilmember Singh indicated he was confused. He thought they were having the first session in September and asked if they were meeting in a closed session before that.

Mayor Olem asked Councilmember Friedrichs to clarify what she was asking in response to Councilmember Singh's question.

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Councilmember Friedrichs clarified that she had questions that she thought would make it easier for them to consider. She said in a closed meeting they would all be together at the same time hearing the same thing. She indicated she had questions that could be brought up in a closed meeting.

Councilmember Singh said he was not concerned about the closed meeting; he was asking for clarification of when. He was concerned about hearing from the public, whether the ordinance should be changed, and bringing their questions to the closed meeting.

Councilmember Friedrichs said that was not what she was suggesting, but she agreed with Councilmember Singh that if specific things came up, they could have another closed session. She indicated she would talk to the Town Attorney about her specific concern.

The Town Attorney suggested to Councilmember Friedrichs and Councilmember Singh that she could hear from them and then leave either the August work session or the first September work session for a closed meeting. The Town Attorney indicated the only proper exemption, she was hearing, was legal advice. She could talk with them in a closed meeting about a question that required confidential legal advice from their attorney and indicated she was offering that.

Mayor Olem thought that was good and clarified she thought the Town Attorney was asking members of Council to talk with her individually about their legal concerns with any kind of ordinance. Mayor Olem said they could look at the ordinance and it may prompt them to come up with legal questions. Mayor Olem reiterated they needed to talk about a legal issue not just what ordinance they want to pass.

Councilmember Singh indicated he was still concerned. He said if they thought the ordinance, as written, was not okay that they needed to address those concerns before they go into the meeting. He indicated he had no legal concerns per se. He said he did not know what Councilmember Friedrichs had.

Councilmember Friedrichs said something came up for her at the last Strategic Planning Meeting, and the Town Attorney indicated it was a legal question they would need to discuss in a closed meeting. Councilmember Friedrichs said it was no legal question with the ordinance. She reiterated it was a question she had and, if answered, she wanted all of Council to hear and have the same information.

Councilmember Singh asked if she wanted to have that before the September meeting.

Councilmember Friedrichs said she did but indicated it was okay if it came up later.

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Councilmember Singh asked the Town Attorney to weigh in.

The Town Attorney indicated she thought this was the reason attorneys gave legal advice before their clients enter into even considering things. They want to give them the legal advice. That is the reason attorneys give advice, and where they would give advice to Council was in a closed meeting. The Town Attorney indicated there was an exemption in the state code that advice could be provided for those reasons.

Councilmember Singh said he was perplexed about the reason for a closed meeting.

Councilmember Friedrichs indicated she would talk to Councilmember Singh.

Mayor Olem indicated they may want the closed meeting in August or September.

The Town Attorney agreed she had enough to go on.

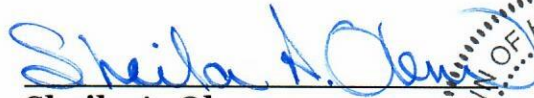
**ROUNDTABLE**

1. **Vice Mayor del Aguila:** No comments.
2. **Councilmember Friedrichs:** Wanted to thank Mr. Irish for following up on the green gunk a resident found in Sugarland Run. The resident took pictures and posted them on the internet. Councilmember Friedrichs thanked Mr. Irish and said she was eager to know the water quality was in Sugarland Run. She indicated she still wanted to know some things. Councilmember Friedrichs voiced appreciation for Mr. Irish and staff for following up on that.
3. **Councilmember Regan:** No comments.
4. **Councilmember Singh:** No comments.
5. **Mayor Olem:** Provided comments about attending the Memorial Day celebration at Jimmy's Old Town Tavern. She indicated people were out respecting fallen veterans, and she saw that around the town. She said the community was coming back to life.

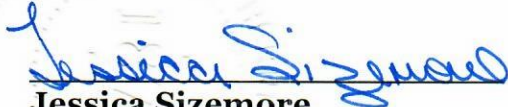
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**ADJOURNMENT**

On motion of Councilmember Friedrichs, seconded by Vice Mayor del Aguila, and carried by unanimous roll call vote by electronic means, the meeting of the June 1, 2021 work session was adjourned at 8:43 p.m. The vote was: Councilmembers Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam and Councilmember Dhakal were absent.



**Sheila A. Olem  
Mayor**



**Jessica Sizemore  
Legislative Assistant**

**Minutes approved by Town Council: September 28, 2021.**