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HERNDON TOWN COUNCIL
Tuesday
September 14, 2021

The Town Council met in public session on Tuesday, September 14, 2021, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Mayor Sheila A. Olem; Vice Mayor Cesar del Aguila; and Councilmembers Naila Alam; Pradip Dhakal; Signe Friedrichs; Sean M. Regan; and Jasbinder Singh.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief of Police, Maggie DeBoard; Scott Robinson, Director of Public Works; Anne Curtis, Chief Communications Officer; Viki Wellershaus, Town Clerk; Page Kalapasev, Director of IT; Tammy Chastain, Deputy Director of Public Works; David Stromberg, Zoning Administrator; Dave Bracamonte, IT Operations Manager; Collin Okoniewski, Community Inspector; Lindsey Jones, System Technician; and Margie Tacci, Deputy Town Clerk.

PLEDGE & CALL TO ORDER

Mayor Olem led the Pledge of Allegiance and called the meeting to order at 7:00 p.m., all members present, with Mayor Olem presiding.

ANNOUNCEMENTS

Mayor Olem asked Council and those participating 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

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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.

APPROVAL OF MINUTES

Vote on May 18, 2021

Town Council Work Session Minutes

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal and carried by unanimous roll call vote, the minutes of the May 18, 2021 Town Council Work Session were approved. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Vote on May 25, 2021

Town Council Public Hearing Minutes

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal and carried by unanimous roll call vote, the minutes of the May 25, 2021 Town Council Strategic Planning Meeting were approved. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

ANNOUNCEMENT

Mayor Olem announced that the Town Council September 21, 2021 Work Session would be held in the Herndon Municipal Center Lobby. The Town Clerk would be sending out calendar invites, and she looked forward to seeing everyone there.

3. COMMENTS FROM THE TOWN MANAGER

Mayor Olem recognized Town Manager, William H. Ashton II who provided comments. Mr. Ashton stated COVID-19 case counts for Fairfax County were in the upper 200s every day. They continued to adapt and had greater spacing at the dais based on a recommendation from Dr. Gloria Addo Ayensu. For the staff update, Mr. Ashton indicated there were two positives, one presumed, and one out with an exposure. Mr. Ashton mentioned the vaccine mandate for employers with over 100 employees and what may be coming down from the federal government, through the state, and to the town.

Mr. Ashton shared that at the Virginia Association of Chiefs of Police (VACP) Conference, Chief DeBoard was given the Outstanding Contribution to Law Enforcement Award, which was not given out every year. The award was given to those who made a major contribution to their profession. Chief DeBoard was tireless in her efforts working with the General Assembly on police reform issues, and Mr. Ashton said she was to be commended for exceptional work. He was very glad that body recognized her.

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Mr. Ashton also shared that, at the same conference, Officer Stephen Phelps was one of only 21 VACP Award for Valor recipients for his actions in thwarting a series of crimes on Labor Day in 2019 which ended in exchanging gunfire with the assailants who were arrested. Mr. Ashton said Officer Phelps displayed great courage and was rightfully recognized by VACP.

Questions from Council

There was a brief question and answer session between Vice Mayor del Aguila and Mr. Ashton about going back to virtual meetings. Mr. Ashton indicated they were not at that point, but it would be up to Council. He shared that, at that time, other bodies in Northern Virginia were meeting in-person and Dr. Gloria Addo Ayensu had given them guidance for remaining in-person.

Responding to further inquiries from Vice Mayor del Aguila about wearing masks at the dais, Mr. Ashton indicated that Dr. Gloria Addo Ayensu indicated they should layer with distancing, masking, and every little bit helped.

4. COMMENTS FROM THE TOWN COUNCIL

Vice Mayor del Aguila: Vice Mayor del Aguila thanked everyone for coming out and submitting comments on the agenda items. He thanked Council for taking active roles in the strategic initiatives. Vice Mayor del Aguila said he felt many initiatives should have been done over time and thanked Council for looking forward. He said Councilmember Singh was in the lead with seven, he trailed with only four, and Councilmembers Regan and Dhakal had one a piece approved. He thought Councilmember Alam had at least four to bring forward. Vice Mayor del Aguila said he thought it was imperative to keep reform in check with residents.

Councilmember Alam: Councilmember Alam mentioned bringing DMV Connect to the town and said she was working with Mr. Ashton and Council on that matter. She also mentioned an immigrant welcome center to welcome new Americans to the town and area, a booster vaccine center, and communicating in multiple languages. She reiterated she would work with Mr. Ashton and Council on these ideas.

Councilmember Dhakal: Thanked everyone for coming to give input and sending comments. He said he was reading them all to hear resident concerns. Councilmember Dhakal extended congratulations to Chief DeBoard and Officer Phelps. He said Council was proud and they were making the town proud. Councilmember Dhakal said the meeting was like pre-COVID and encouraged everyone to mask and social distance.

Councilmember Friedrichs: Congratulated Chief DeBoard and Officer Phelps. (Councilmember Friedrich's microphone was not on and the beginning of her comments were inaudible.) Councilmember Friedrichs continued her comments saying that she spent time debating with residents on many sides of the gun issue. She indicated that an ordinance to restrict guns from public property was first proposed by the last council

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which declined to bring it forward. After being brought forward again this year, Council had received many comments and emails from all sides and many different points of view.

She said, to her friends who were part of various gun organizations, this ordinance was not a done deal and Council had been debating it for some time. She said there was a lot of thought going into this and indicated it had come up many times. Councilmember Friedrichs said they received emails accusing them of passing it because of political leanings. She hoped the dialogue could cease to be about political parties and focus on what could be done to make everyone safer. She said the question to answer before passing any regulation, was what problem they were trying to solve, if they passed it how they would enforce it, and how they would bear the cost.

She felt this ordinance risked dividing the town whose welcoming and inclusive nature made so many feel comfortable and welcome there. Councilmember Friedrichs said they received nearly 300 comments, which were mostly emails, and many were from a national organization that advocates purchasing guns. Residents wrote comments to support and or question parts of the ordinance. She indicated she spoke with others who did or did not support this. To her friends who support restrictions on gun rights, she asked them to remember this did not give them anymore protection than they currently had under the law. Virginia is an open carry state. This ordinance does not and cannot change that. Even if this regulation passed, people would be able to carry openly or concealed, with a permit, in almost every part of the town. Councilmember Friedrichs said that, currently, if someone was open carrying and removed their gun from the holster or their shoulder in a manner that someone considered threatening it was considered brandishing and the police could be called. In Virginia, licensed gun owners could apply for permits, and if approved, carry their guns concealed.

Councilmember Friedrichs opined that unless they installed magnetometers, at a cost of about \$157,000 each, and hired extra security to man them, at a cost of about \$157,000 per year, their buildings would be made no safer by this ordinance. To put the cost in perspective, Councilmember Friedrichs stated ~\$150,000 was the cost of new trash truck, and they debated if they could afford that. She indicated that properly implementing this ordinance would "cost six dump trucks to startup and five every year thereafter." She said if they did not install security at the entrances of building, they had no way of knowing if people were concealed carrying. Thus, they would be no safer than they were without the ordinance. Councilmember Friedrichs said those that intended to do harm to Council or staff would not be prevented from doing so by a sign.

Point of Order

Vice Mayor del Aguila called for a point of order during Councilmember Friedrichs' comments.

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Mayor Olem asked Vice Mayor del Aguila what his point of order was. She indicated that Councilmember Friedrichs had the floor to make her roundtable comments, as Vice Mayor del Aguila had done.

Vice Mayor del Aguila stated his point of order was on comments regarding an item on that night's agenda.

Mayor Olem declined Vice Mayor del Aguila's point of order.

Vice Mayor del Aguila challenged the ruling by the Chair.

Councilmember Friedrichs asked the Town Attorney for clarification.

Clarification

The Town Attorney stated that Councilmembers are not limited, like the general public is, to speak only on things that are not public hearing items. She stated that there was a 10-minute time limit, but not a subject matter limit.

Councilmember Friedrichs continued her comments. She said if their goal was to create a public space where they rarely, if ever saw a weapon, where they could call the police if they felt threatened, and where it was generally understood there was no need to bring guns, they already had that. She asked what problem they were trying to solve with this ordinance.

Councilmember Regan: No comments.

Councilmember Singh: Indicated he wanted to pick up on what problem they were trying to solve. He said he came here when he was 25 years old, and he knew nothing about the Constitution much less the Second Amendment. He said he spent a lot of time reflecting on events that took place over the last few years and had read a lot about the Second Amendment and other parts of the Constitution. He said what went through his mind was that they had the Second Amendment for 200 years or so and these issues remained. He said they had not moved to some common understanding of where to go or where they were.

Councilmember Singh provided comments about Michigan when many people went to the State Capitol with guns demonstrating against the governor and the assembly. He said they should ask if they want to have that kind of way of life where, due to political differences, people brought guns to threaten people. He thought that was one aspect.

Councilmember Singh felt the second thing was there were many demonstrations from both sides. He said a recent study came out that said there were many people on both sides that came in with guns and wanted to provoke violence and chaos. He said they may have a right to carry guns but asked if they needed to create such things. He asked what they needed to do so chaos was not created.

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Councilmember Singh said the third thing was there were studies that the presence of guns at various events, even at orderly events, create tension among people. He felt people were not comfortable with people carrying guns and that people at Herndon Festival, or other town events, were not threatened by other people. He indicated people said they needed to bring their guns to protect themselves in case of violence, but he thought people were generally very peaceful in those events. He thought these were three things that defined the extreme ends of where they were today. Councilmember Singh felt the thing they needed to find was a way to reach some consensus to move forward. He thought they could not stay there for the next 100 years. He said he was looking to comments to reflect on these three things.

Councilmember Singh added that the Supreme Court, in 2008 or 2009, did speak about the Second Amendment. He said it gave citizens a right to own guns at home to protect themselves, and he would read it. Councilmember Singh said that Justice Scalia said they did not decide anything else about the right for people to own guns, and future Supreme Courts would decide on those issues. He said he may be misquoting but that you cannot have a gun whenever and wherever you want. He said there had to be a limit and this was a conservative Supreme Court.

Councilmember Singh reiterated that he wanted to listen.

He asked what problem they faced in Herndon. He said they were in the context of the society, they face problems at different points, and they would face it at some point in the future. He asked if they needed to act now.

Councilmember Singh said he was never more afraid than the 2016 election. He said there was political violence against his signs and that was not acceptable. He said they cannot go to a place where they want to have discussions and free elections with violence.

Councilmember Singh restated he was eager to listen to comments.

Mayor Olem: Shared that the past weekend was the 20th anniversary of the 9/11 event of 2001. Mayor Olem said one thing she felt fortunate about was that the Herndon community was so inclusive and embracing. She said she went to a memorial service at Holy Cross Lutheran Church and it was a delightful service. She mentioned the joyful bell ringers and shared she spent the evening going to a September 11th candlelight service at St. Timothy's Episcopal Church at 8:30 p.m. The service was in both English and Spanish. At the service a person who lived in El Salvador, at the time of September 11th, shared their story. Mayor Olem shared that Councilmember Friedrichs was also in attendance. Mayor Olem said those in Herndon were always looking out for each other during sorrows and joys. She thanked the community for putting on those events which were open to everyone.

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Mayor Olem also announced that fall cleanup was coming, and those interested should mark their calendars for the week of October 18-22 for large items. She also shared that that the Herndon Community Center was open for business.

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Olem asked the Deputy Town Clerk whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and the Deputy Town Clerk stated no comments or disclosures had been received from Council on any items listed on the agenda that evening.

The Deputy Town Clerk said comments had been received and entered into the record on the proposed ordinance to amend Chapter 46, which was item #7 on the agenda. Previous comments received on this item were also re-entered into the record.

5. COMMENTS FROM THE AUDIENCE

Mayor Olem reminded individuals they could address the Council on any items not listed as a public hearing. They could also comment on the Consent Agenda. She drew attention to the VDOT Transportation Revenue Sharing Programs and East Elden Herndon Centre Signalization Project.

Mayor Olem reviewed the process for speaking and comments.

The following members of the audience provided comments:

- Ann Null, 631 Oak Street, Herndon: Thanked and congratulated Chief DeBoard and Officer Phelps. Ms. Null then provided comments to Council about their role.

PUBLIC HEARINGS

6. Ordinance 21-O-21, to approve and authorize the Mayor to sign a third lease amendment to T-Mobile Northeast LLC to revise the approved equipment list and premises description at the Town's Alabama Drive Water Tower.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been advertised in the Friday, August 27, 2021 and Friday, September 3, 2021 issues.

Mayor Olem recognized Tammy Chastain, Deputy Director of Public Works who presented the staff report. Ms. Chastain stated this was an amendment to allow T-Mobile to upgrade and replace their existing equipment. The amendment would then go to the Architectural Review Board and the building permit process. The lease was unchanged and subject to a three percent escalation.

Staff recommended approval.

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Responding to a query from Vice Mayor del Aguila, Ms. Chastain confirmed there were no changes to this item since the work session.

Councilmember Singh provided personal comments about putting antennas on water towers. He urged Mr. Ashton to address his issues with town water towers and voiced concerns.

Mayor Olem asked if there were any public comments on 21-O-21, seeing none, Mayor Olem closed the public hearing and moved to Council level for discussion and action.

Councilmember Regan moved to approve Ordinance 21-O-21, authorizing the Mayor to sign a third lease amendment to third lease amendment to T-Mobile Northeast LLC to revise the approved equipment list & premises description at the Town's Alabama Drive Water Tower.

Vice Mayor del Aguila seconded the motion.

There was no discussion.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Ordinance 21-O-21, to approve and authorize the Mayor to sign a third lease amendment to T-Mobile Northeast LLC to revise the approved equipment list and premises description at the Town's Alabama Drive Water Tower.

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

1. The Town Council approves this Third Amendment to Deed of Lease dated September 14, 2021. This instrument amends the original Deed of Lease dated May 5, 2009, the First Amendment to Deed of Lease dated June 9, 2015, and the Second Amendment to Deed of Lease dated January 29, 2019.
2. This instrument updates the approved equipment list. Equipment changes include the addition of 1 Power Protection Cabinet up to 40" x 24" x 10" and 1 Meter up to 18" x 12" x 6".
3. This instrument approves revising the upper size limit of Equipment Cabinets from a quantity of 3 to 4 and from 63" x 51' x 37" up to 64" x 52" x 37", Remote Radio Units (RRU's) from a quantity of 3 to 6 and from 17" x 7.2" x 19.7" up to 17" x 15" x 12", Antennas from 56.6" x 12.9" x 8.7" up to 98" x 24" x 10", Coax and/or Fiber Hybrid Cables from a quantity of 18 to 15 and from 7/8" D up to 2" D, and 25KW Diesel Generator from 83" x 38" x 72" up to 96" x 38" X 90".

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4. In all other respects the original lease remains in effect.
6. The Mayor is authorized to sign and deliver the lease amendment and any ancillary instruments necessary to evidence or effectuate the lease amendment, provided they are consistent with this ordinance and on such form approved by the Town Attorney.
7. This ordinance shall be in effect on and after the date of its adoption.

[Note: Attached for reference, at the end of the minutes, is the Third Amendment to Deed of Lease dated September 14, 2021 between the town and T-Mobile Northeast LLC.]

7. **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.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been advertised in the Friday, September 3, 2021 issue.

Mayor Olem recognized Lesa Yeatts, Town Attorney and Chief DeBoard for the staff report. Ms. Yeatts presented the staff report and PowerPoint, dated September 14, 2021, which are on file in the Town Clerk's office.

Ms. Yeatts stated the 2020 Virginia General Assembly adopted enabling legislation which took effect on July 1, 2020 authorizing localities to adopt ordinances prohibiting firearms in certain circumstances. Ms. Yeatts reviewed that this was §15.2-915 (E). She reviewed other localities in the state who adopted ordinances and what was authorized in localities by the code section.

To date, Arlington, Loudoun and Fairfax counties, as well as the cities of Alexandria, Charlottesville, Falls Church, Newport News, Richmond, Roanoke, Winchester and the Town of Blacksburg have adopted ordinances authorized by Virginia Code Section 15.2-915.

Ms. Yeatts outlined that the topic came before Town Council several times, and she shared the various meeting dates when this topic came up. At the June 1, 2021 work session, there was a general discussion which resulted in consensus to move forward in September to hold two public hearings on a draft ordinance.

Ms. Yeatts indicated more than 200 written comments had been received to date. This was the first opportunity for citizen public hearing comments.

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The new code section was Section 46-60 (Possession of Firearms on Town Property), based on §15.2-915 of the Code of Virginia. It would 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.

§15.2-915 of the Code of Virginia authorized 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.

Ms. Yeatts further clarified that the town did own and lease some properties. There was discussion during the work session about what a town-sponsored event was. State code language was very broad to cover any event permitted by the town. Ms. Yeatts outlined some events that would be included under broader permit language. Currently, it was a narrower definition of official town-sponsored events, which were events that had the majority of their funding come from the town in the way of money, services, or venue.

A violation would be a Class 1 misdemeanor which would carry up to a \$2500 fine, 12 months in jail, or both.

Those who would be affected would be citizens and others visiting town buildings, residents and visitors transacting business with the town, and attendees at official town-sponsored events.

Ms. Yeatts then reviewed the list of exemptions which included: military personnel when acting within the scope of their official duties, sworn or retired law enforcement officers, private security personnel hired by the town who are present and on duty, historical re-enactors and any other persons taking part in a special event who possess firearms that are inoperative, possession of a concealed handgun pursuant to a valid concealed handgun permit. As drafted, it does not prohibit possession of firearms on public streets, sidewalks, or public places unless they are being used for "official town-sponsored events."

Ms. Yeatts referenced a table of comparison for exemptions in other Northern Virginia localities and the Town of Blacksburg to show the wide variety. She noted, in prior discussion with Council, two northern Virginia counties (Fairfax and Winchester) were in litigation pursuant to adoption of ordinances. The subject revolves around prohibition of firearms in public parks and areas adjoining permitted events as described in the state code, and regarding the prohibition of concealed weapons.

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If approved, the ordinance would be effective on the date of adoption. However, to be enforceable, clear signage must be prominently posted where Ordinance 21-O-10 would be enforced, to notify the public of the restrictions. Specifically, enabling legislation in the code required that they place signage at all entrances of any building or part thereof, at all entrances of any park owned or operated by the locality, at all entrances of recreation centers or community centers operated by the locality, and all entrances of other appropriate places of ingress and egress to any public street, road, alley, sidewalk, etc. where there was a town-sponsored event.

Ms. Yeatts stated it would take some time for the town to place this signage and presented Fairfax County signs as an example of what would need to be posted everywhere the prohibition applied.

The budgetary impacts were expected to be approximately a minimum of ~\$6,000 for signs, excluding places of town-sponsored events. Other items necessary for enforcement would need to be decided, and examples and proposals were included in Council's materials and considered at the Strategic Planning Meeting. Ms. Yeatts reminded Council other items included things like magnetometers and staff for the machines which would be substantial costs.

Ms. Yeatts indicated Council could adopt the proposed ordinance, as presented, defer consideration of the proposed ordinance to conduct another public hearing, or provide other direction to the Town Manager and staff regarding what they wanted to see in the ordinance.

She provided examples of some things they could choose to adopt, where they might want to limit the prohibition to, including specifics regarding enforcement measures, and alternatives with what can or cannot be included.

Mayor Olem asked how many deaths by guns had occurred in town buildings or town parks. Ms. Yeatts indicated she did not know the answer to that. Chief DeBoard indicated that in the nine plus years she had been in the town, she did not recall any in town buildings or town parks.

Mayor Olem then asked Ms. Yeatts to go over the key risks in the impact assessment. Ms. Yeatts stated the risks identified by staff, which were in the Council's materials, were individuals testing the ordinance and attempting to bring weapons into town building and events, not knowing individual had weapons without enforcement, not being able to enforce the ordinance until after a firearm was produced or used, and Council, staff, and the public being placed in harm's way.

Vice Mayor del Aguila said this ordinance did not prohibit anyone from owning or purchasing firearms, and Ms. Yeatts confirmed. Vice Mayor del Aguila said this did not allow HPD to confiscate weapons from private citizens. Ms. Yeatts confirmed.

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Vice del Aguila asked if this prohibited anyone from purchasing firearms or ammunition. Ms. Yeatts said this only addressed possession of firearms or ammunition in the areas specified.

Vice Mayor del Aguila stated his name was on this initiative. He indicated the “why” was that he, as a Latino, growing up in this country observed an issue with violence in this country. He thought if they asked a lot of people not represented there felt that was the issue. He said he wanted to have a discussion on the facts. He reiterated this did not give the town or HPD to take anyone’s gun walking down the street.

Ms. Yeatts said that was not enabled or included.

Vice Mayor del Aguila said the only thing was town facilities and parks and streets for events. Vice Mayor del Aguila said they got several emails and there was a lot of misinformation out there. He wanted to clarify what the ordinance was and what it was not.

Councilmember Regan asked if a town parking lot was a public place. Ms. Yeatts indicated there was discussion about parking lots at the work session. She provided information about two different types of parking lots and indicated that, if Council directed her on how they wanted parking lots considered, staff could address that regarding certain specific parking lots.

Responding to a request from Councilmember Regan, Ms. Yeatts reiterated that a Class 1 misdemeanor could carry up to a \$2500 fine, 12 months in jail, or both.

There was a question and answer session between Councilmember Dhakal and Ms. Yeatts about the “TBD” items, if the ordinance went through. Ms. Yeatts indicated that subsection A2 of the ordinance would authorize the Town Manager to implement security measures. In implementing those items, he would need to implement signage. Other items were costly and would possibly require budget appropriations for funds. She indicated there were questions from the work session about whether adopting this ordinance authorized fiscal appropriations. She clarified that it did not.

There was a brief question and answer session between Councilmember Dhakal and Ms. Yeatts about valid concealed carry permits and the Fairfax County Ordinance. Based on follow up questions from Councilmember Dhakal about the Fairfax County Library in the town, Ms. Yeatts clarified that, as a Fairfax County building, the library was under Fairfax County laws.

Councilmember Friedrichs provided comments about Councilmember Dhakal’s question and inquired about the library location making enforcement difficult. Ms. Yeatts indicated they would have to have notice with signs present and, based on parking garage decisions, they would need town signs about guns being prohibited there depending on what was decided.

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There was a question and answer session between Councilmember Friedrichs and Ms. Yeatts about enforcement in a difficult location, like the library. This led to further discussion about events and parks owned by more than one jurisdiction in relation to signs.

There was a brief question and answer session between Councilmember Friedrichs and Ms. Yeatts about the town's signs needing to look different than Fairfax County's in such areas.

Following further comments from Councilmember Friedrichs about changes they had made to this ordinance, which originally dovetailed with Fairfax County's, Ms. Yeatts confirmed there were no other changes besides more specificity about official town-sponsored events, changing the section about adjacent properties, and allowing concealed carry.

There was brief discussion between Councilmember Singh and Ms. Yeatts about Council's ability to suggest other directions. Ms. Yeatts clarified that if the language was going to change, it would need to change in time to come out the following Friday. She indicated Council could discuss but it would be most appropriate to receive that direction that evening.

Mayor Olem asked that there be no applause between speakers. She reviewed the speaker process and recognized registered speakers to address Council.

The following registered speakers provided comments on Ordinance 21-O-10:

- Nathan John-Hosi, 590 Grove Street #249, Herndon, VA 20170;
- Rick Garverick, 609 Austin Lane, Herndon, VA 20170;
- Bryce Cumbie, 616 Worchester Street, Herndon, VA 20170;
- Sherry Blanton, 549 Florida Avenue T-3, Herndon, VA 20170;
- Ed Ziemba, 953 Bayshire Court, Herndon, VA 20170;
- Keven LeBlanc, 818 Locust Street, Herndon, VA 20170;
- Stevan Porter, 905 Vine Street, Herndon, VA 20170;
- Chris Smith, 505 Bowers Lane, Herndon, VA 20170;
- Susan Murray, 701 Bruce Court, Herndon, VA 20170;
- Jose M. Frias, 707 Morningside Court, Herndon, VA 20170;
- Joshua Godaire, 601 Fillmore Street, Herndon, VA 20170;
- Barbara Glakas, 935 Barton Oaks Place, Herndon, VA 20170;
- Ann Null, 631 Oak Street, Herndon, VA 20170;

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- John Glass, 12029 Winding Way Drive, Herndon, VA 20170;
- Barton Bennett, 1554 Hidden Brook Drive, Herndon, VA 20170;
- Hilary Spring, 12134 Stirrup Road, Reston, VA 20191; and
- Ray Nogueras, 13022 Park Crescent Circle, Herndon, VA 20171.

Following comments from registered speakers, Mayor Olem asked if there was a motion to continue the public hearing to September 28, 2021 for a second public hearing.

Vice Mayor del Aguila made a motion to continue the item to a second public hearing.

The motion was seconded by Councilmember Singh.

Vice Mayor del Aguila, Councilmember Singh, Councilmember Dhakal, and Mayor Olem each provided personal comments about the ordinance.

Mayor Olem stated she looked forward to hearing from those who still wanted to submit comments and those who would speak at the second public hearing on September 28, 2021.

Councilmember Singh then read a paragraph from an article and indicated he would be happy to share the article with anyone interested.

Councilmember Friedrichs and Councilmember Dhakal both provided additional personal comments.

Mayor Olem reiterated there was a motion on the floor.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

CONSENT

8. **Resolution 21-G-74, to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event;**
9. **Resolution 21-G-75, to approve a Temporary License Agreement to use a designated public space in the alley adjacent to and behind Aslin Beer Company for an outdoor event;**

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10. **Resolution 21-G-76, to endorse and authorize a funding application to the Virginia Department of Transportation (VDOT) for the allocation of VDOT Revenue Sharing Program funds towards the VDOT administered East Elden Street Widening & Improvements (UPC 50100) project; and**
11. **Resolution 21-G-77, to endorse and authorize a funding application to the Virginia Department of Transportation (VDOT) for the allocation of VDOT Revenue Sharing Program funds towards the East Elden Street and Herndon Centre Signalization project.**

On motion of Vice Mayor del Aguila, seconded by Councilmember Friedrichs, the Consent Agenda items were approved by unanimous roll call vote, without comment. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Resolution 21-G-74, to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event.

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

1. The Town Council approves a temporary license agreement dated September 14, 2021 between the Town of Herndon as licensor and JOTT, INC. d/b/a Jimmy's Old Town Tavern (Jimmy's) as licensee. The license allows Jimmy's to use designated public alley space adjacent to Jimmy's for outdoor seating during an event on October 3, 2021. The license agreement may contain other terms agreed to by the Mayor and is on file in the office of the Town Attorney.
2. The Mayor is authorized to sign and deliver this license agreement and any other instrument to evidence or support the license agreement
3. This resolution shall be effective on and after the date of its adoption.

[Note: Attached for reference is the temporary license agreement between the town and JOTT, INC. d/b/a Jimmy's Old Town Tavern dated September 14, 2021.]

**September 14, 2021
(public hearing)**

TEMPORARY LICENSE AGREEMENT

This Agreement ("Agreement") is made this 14th day of September 2021 by and between JOTT, INC. d/b/a Jimmy's Old Town Tavern ("Jimmy's") and the TOWN OF HERNDON, VIRGINIA, ("Town").

WHEREAS Jimmy's represents that they have a Temporary Use Permit to conduct an event in the Town of Herndon on October 3, 2021 represented in "Exhibit A" attached hereto ("Permit") and that Jimmy's would like to use the Town's property behind Jimmy's Old Town Tavern Restaurant as shown on the Permit and known as the "Alley";

WHEREAS the Town desires to permit the use of the Alley by Jimmy's on the date as described in the Permit (on October 3, 2021 only).

Now therefore the parties agree as follows:

1. The Town hereby grants Jimmy's authorization to temporarily use the Alley for purposes described in the Permit
2. Jimmy's shall comply with the terms of the Permit, this License, and all applicable town, state and federal laws and regulations obtaining and maintaining at all times any other permit(s) required under applicable law for this use.
3. The parties expressly agree and contract that there shall be no fee for the use of the Town property on this occasion only.
4. The permission to use the property granted by this agreement is nonexclusive in nature, and the Town reserves the right to make concurrent use of the Property.
5. Jimmy's hereby assumes all risk of damage by reason of its occupation of the Alley caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and Jimmy's hereby agrees to hold harmless and indemnify the Town, its officers, agents and employees, from and against any such liability for such damage or injury to the extent permitted under the laws of the Commonwealth of Virginia.
6. Jimmy's shall secure, provide and maintain insurance to protect the Town of such type and in such amount as is described below naming the Town as an additional insured. This Agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives Jimmy's written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

Liability - Coverage totaling \$5,000,000.00. All policies shall be endorsed to name the Town of Herndon as an additional insured

**September 14, 2021
(public hearing)**

The insurance required hereunder shall be maintained in effect during the duration of this Agreement. Insurance Policy(s) shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) calendar days advance written notice thereof to the Town.

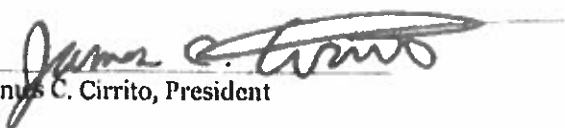
7. Termination: The Town may terminate this Agreement upon 24 hours notice to Jimmy's for cause.

8. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.

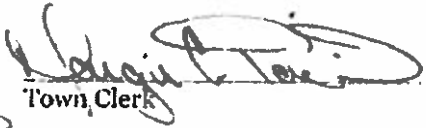
9. This Agreement contains the entire and only agreement between the parties, and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

JOTT, INC.

d/b/a Jimmy's Old Town Tavern

By 
Janus C. Cirrito, President

ATTEST:


Town Clerk

TOWN OF HERNDON, VIRGINIA

By 
Sheila A. Olem, Mayor



APPROVED AS TO FORM:


Lisa J. Yeatts
Town Attorney

**September 14, 2021
(public hearing)**

Resolution 21-G-75, to approve a temporary license agreement to use a designated public space in the alley adjacent to and behind Aslin Beer Company for an outdoor event.

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

1. The Town Council approves a temporary license agreement dated September 14, 2021 between the Town of Herndon as licensor and ASLIN BEER COMPANY (Aslin) as licensee. The license allows Aslin to use designated public alley space behind 767 and 771 Elden Street during anniversary events on September 14, 2021 through September 20, 2021. The license agreement may contain other terms agreed to by the Mayor and is on file in the office of the Town Attorney.
2. The Mayor is authorized to sign and deliver this license agreement and any other instrument to evidence or support the license agreement
3. This resolution shall be effective on and after the date of its adoption.

[Note: Attached for reference is the temporary license agreement b/n the town and ASLIN BEER COMPANY (Aslin) dated September 14, 2021.]

**September 14, 2021
(public hearing)**

TEMPORARY LICENSE AGREEMENT

This Agreement ("Agreement") is made this 14th day of September 2021 by and between ASLIN BEER COMPANY ("Aslin") and the TOWN OF HERNDON, VIRGINIA, ("Town").

WHEREAS Aslin represents that they have a Temporary Use Permit to conduct an event in the Town of Herndon on September 14, 2021 through September 20, 2021). represented in "Exhibit A" attached hereto ("Permit") and that Aslin would like to use the Town's property behind Aslin as shown on the Permit and known as the "Alley";

WHEREAS the Town desires to permit the use of the Alley behind Aslin located at 767 and 771 Elden Street, Herndon, Virginia, on the dates as described in the Permit (on September 14, 2021 through September 20, 2021).

Now therefore the parties agree as follows:

1. The Town hereby grants Aslin authorization to temporarily use the Alley for purposes described in the Permit as follows:
 - a. September 14, 2021 – September 15, 2021, limited to setup of the outdoor seating tents, games, and food truck.
 - b. September 16, 2021 – September 19, 2021, for the various "Aslin 6 Year Anniversary" events described in the Permit.
 - c. September 20, 2021, limited to the breakdown and removal of the outdoor seating tents, games, food truck and any other facilities or items in the Alley.
2. Aslin shall comply with the terms of the Permit, this License, and all applicable town, state and federal laws and regulations obtaining and maintaining at all times any other permit(s) required under applicable law for this use.
3. The parties expressly agree and contract that there shall be no fee for the use of the Town property on this occasion only.
4. The permission to use the property granted by this agreement is nonexclusive in nature, and the Town reserves the right to make concurrent use of the Property.
5. Aslin hereby assumes all risk of damage by reason of its occupation of the Alley caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and Aslin hereby agrees to hold harmless and indemnify the Town, its officers, agents and employees, from and against any such liability for such damage or injury to the extent permitted under the laws of the Commonwealth of Virginia.
6. Aslin shall secure, provide and maintain insurance to protect the Town of such type and in such amount as is described below naming the Town as an additional insured. This Agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives Aslin written confirmation that the type and amount of insurance is accepted.

**September 14, 2021
(public hearing)**

Insurance limits shall not be less than the following amounts:

Liability - Coverage totaling \$5,000,000.00. All policies shall be endorsed to name the Town of Herndon as an additional insured

The insurance required hereunder shall be maintained in effect during the duration of this Agreement. Insurance Policy(s) shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) calendar days advance written notice thereof to the Town.

7. Termination: The Town may terminate this Agreement upon 24 hours notice to Aslin for cause.

8. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.

9. This Agreement contains the entire and only agreement between the parties, and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

ASLIN BEER COMPANY

By: [Signature]
Name: KAI LESKANEZ
Its: VICE PRESIDENT

ATTEST:

[Signature]
Town Clerk

TOWN OF HERNDON, VIRGINIA

By: [Signature]
Sheila A. Olem, Mayor

APPROVED AS TO FORM:

[Signature]
Lesa J. Yeatts
Town Attorney



**September 14, 2021
(public hearing)**

Resolution 21-G-76, to endorse and authorize an application to the Virginia Department of Transportation (VDOT) for the Allocation of FY2027 and FY2028 Revenue Sharing Funds for the East Elden Street Widening and Improvements project.

WHEREAS, the Revenue Sharing Program provides additional funding to construct, improve or maintain the highway system; and

WHEREAS, the program is administered by the Virginia Department of Transportation in cooperation with the participating locality, under the authority of Section 33.1-23.05 of the Code of Virginia; and

WHEREAS, the Town of Herndon may directly apply for this program since it maintains its own streets; and

WHEREAS, the Town of Herndon must provide VDOT with a Revenue Sharing application and resolution, outlining its request to participate and support of the potential project identified for possible funding by October 1, 2021; and

WHEREAS, the Town of Herndon desires to submit an application for an allocation of funds of up to \$5,500,000 through the VDOT FY2027 and FY2028 Revenue Sharing Program; and

WHEREAS, the Town of Herndon must commit a minimum of fifty percent in local matching funds, comprised of town general funds, town bond funds and/or Northern Virginia Transportation Authority (NVTA) local revenue funds of up to \$2,750,000 (\$1,375,000 for FY2027 and \$1,375,000 for FY2028) within the two fiscal years subsequent to allocation along with a Town-VDOT agreement prior to beginning a VDOT administered project; and

WHEREAS, the town's local matching funds in the amount up to \$2,750,000 are requested to be directed towards funding the VDOT administered *East Elden Street Widening and Improvements* (UPC 50100) project in the Town of Herndon.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby supports and authorizes this application be submitted for the allocation of up to \$5,500,000 through the Virginia Department of Transportation Revenue Sharing Program.

BE IT FURTHER RESOLVED THAT the Town of Herndon hereby grants authority for the Town Manager to execute project administration agreements for any approved VDOT Revenue Sharing projects.

**September 14, 2021
(public hearing)**

Resolution 21-G-77, to endorse and authorize an application to the Virginia Department of Transportation (VDOT) for the Allocation of FY2027 and FY2028 Revenue Sharing Funds for the East Elden Street and Herndon Centre Signalization - UPC 50100, Phase 2 project.

WHEREAS, the Revenue Sharing Program provides additional funding to construct, improve or maintain the highway system; and

WHEREAS, the program is administered by the Virginia Department of Transportation in cooperation with the participating locality, under the authority of Section 33.1-23.05 of the Code of Virginia; and

WHEREAS, the Town of Herndon may directly apply for this program since it maintains its own streets; and

WHEREAS, the Town of Herndon must provide VDOT with a Revenue Sharing application and resolution, outlining its request to participate and support of the potential project identified for possible funding by October 1, 2021; and

WHEREAS, the Town of Herndon desires to submit an application for a total allocation of funds of up to \$1,500,000 through the Virginia Department of Transportation Fiscal Year 2027 and Fiscal Year 2028 Revenue Sharing Program; and

WHEREAS, the Town of Herndon must commit a minimum of fifty percent in local matching funds, comprised of town general funds, town bond funds and/or Northern Virginia Transportation Authority (NVTA) Local revenue funds, of up to \$750,000 (\$375,000 for FY2027 and \$375,000 for FY2028) within the two fiscal years subsequent to allocation along with a Town/VDOT project agreement prior to beginning a VDOT administered project; and

WHEREAS, the town's local matching funds in the amount of up to \$750,000 are requested to be directed towards funding the *East Elden Street and Herndon Centre Signalization - UPC 50100, Phase 2* project in the Town of Herndon.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby supports and authorizes this application to be submitted for the allocation of up to \$1,500,000 through the Virginia Department of Transportation Revenue Sharing Program.

**September 14, 2021
(public hearing)**

BE IT FURTHER RESOLVED THAT the Town of Herndon hereby grants authority for the Town Manager to execute project administration agreements for any approved VDOT Revenue Sharing projects

ADJOURNMENT

Vice Mayor del Aguila moved to adjourn the meeting of the September 14, 2021 public hearing at 9:28 p.m., and Councilmember Dhakal seconded the motion. The question was called on the motion which carried by unanimous roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."



**Sheila A. Olem
Mayor**



**Jessica Sizemore
Legislative Assistant**



Minutes approved by Town Council: January 11, 2022.

**September 14, 2021
(public hearing)**

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THIRD AMENDMENT TO DEED OF LEASE

This Third Amendment to Deed of Lease ("Third Amendment"), is made this 14th day of September 2021 by and between the **TOWN OF HERNDON, VIRGINIA**, a municipal corporation. ("Town") and **T-MOBILE NORTHEAST LLC**, a Delaware limited liability company ("Lessee").

WHEREAS, Town and Lessee entered into that certain Deed of Lease dated May 5, 2009, as amended by the First Amendment to Deed of Lease dated June 9, 2015, as amended by the Second Amendment to Deed of Lease dated January 29, 2019 (collectively referred to herein as the "Lease") whereby the Town leased to Lessee a portion of the Town's property and space on the Alabama Drive Water Tower located at 624 Alabama Drive, Herndon, Fairfax County, Virginia 20170 (the "Premises"); and known as Site Number 7WAC315N to Lessee; and

WHEREAS, Town and Lessee desire to amend the Lease as follows: and

WHEREAS, Town and Lessee hereby affirm that, as of the date hereof: (i) no breach or default by Town or Lessee occurred; and (ii) the Lease, and all the terms, covenants, conditions, provisions and agreements thereof, except as expressly modified by this Third Amendment are in full force and effect, with no defenses or offsets thereto.

NOW THEREFORE, in consideration of the mutual covenants contained in the Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Lessee hereby agree as follows:

1. All capitalized terms shall have the meaning ascribed to them in the Lease unless otherwise defined in this Third Amendment.
2. Exhibit B-1 is deleted in its entirety and replaced with Exhibit B dated September 14, 2021. Exhibit C-2 is deleted in its entirety and replaced with Exhibit C dated September 14, 2021, both are attached hereto and incorporated herein.
3. Lessee is hereby granted the modification of its premises description as described in Exhibit B dated September 14, 2021 and its equipment list as described in Exhibit C dated September 14, 2021, both attached hereto and incorporated herein.
4. Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Third Amendment.
5. This Third Amendment will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.
6. Lessee represents and warrants to Town that the consent or approval of any third party has either been obtained or is not required with respect to the execution of this Third Amendment.

Lessee Site ID: 7WAC315N

**September 14, 2021
(public hearing)**

DocuSign Envelope ID: 2CCEE49B-DDE8-4960-A736-BAFF1D58F6E0

7. Except as specifically amended herein, the remaining terms of the Lease shall remain in full force and effect. To the extent any provision contained in this Third Amendment conflicts with the terms of the Lease, the terms and provisions of this Third Amendment shall prevail.
8. This Third Amendment may be executed in duplicate counterparts, each of which will be deemed an original.

TOWN:

TOWN OF HERNDON, VIRGINIA

BY: Sheila A. Olem
Sheila A. Olem
Mayor



ATTEST:

[Signature]
Acting Town Clerk

APPROVED AS TO FORM:

[Signature]
Lesa J. Yeatts
Town Attorney

LESSEE:

T-MOBILE NORTHEAST LLC

BY: [Signature]

NAME: JAMES SIMON

TITLE: Director

TMO
Legal
1



Lessee Site ID: 7WAC315N

**September 14, 2021
(public hearing)**

DocuSign Envelope ID: 2CCEE49B-ODE8-4960-A736-BAFF1D58F8E0

Exhibit B

September 14, 2021

The premises shall consist of the following:

1. The Ground Space, consisting of approximately 360 square feet for placement of equipment cabinets and a back-up generator and associated concrete pad and enclosure.
2. Space on the Tower sufficient to accommodate the placement, installation, operation, and maintenance of the equipment (listed on Exhibit "C", dated September 14, 2021).
3. The Access easement.
4. The Utility Easements.
5. The Generator Space.
6. The premises are depicted on the attached drawings.

Nothing in this legal description shall convey to Lessee any rights in the Property other than what are specifically described in this Deed of Lease as to the Premises.

**September 14, 2021
(public hearing)**

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Exhibit C

Page 1 of 4

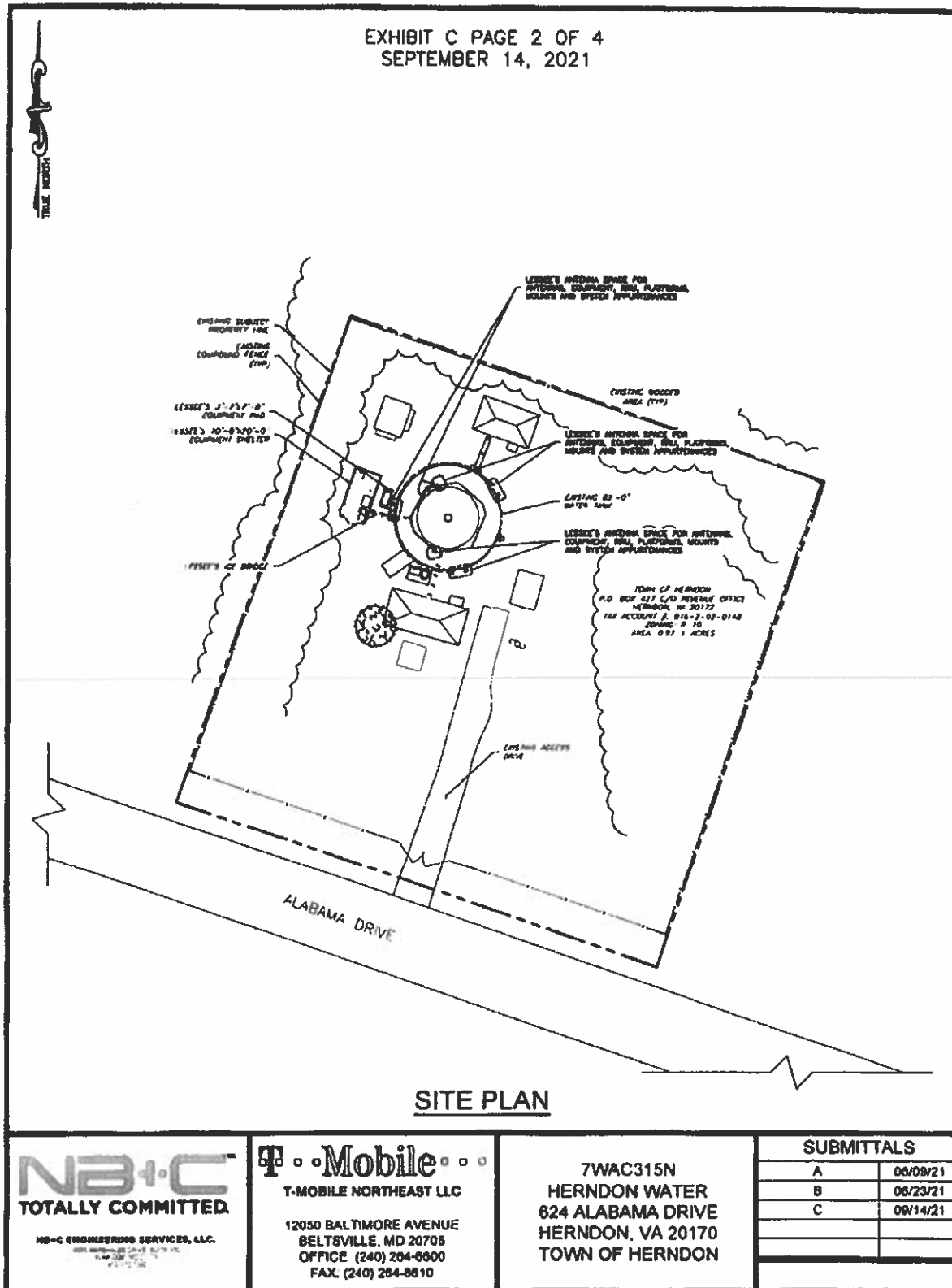
September 14, 2021

The following equipment together with any associated wires, cables, pipes, conduits and supporting structures associated with the equipment shall be located on the Alabama Drive Water Tank as generally shown on the attached drawings.

Quantity	Type	Approximate Size (H x W x D)
1	Equipment Shelter	10' x 20' (W x D)
1	Generator Enclosure	10' x 15' (W x D)
4	Equipment Cabinets	Up to 64" x 52" x 37"
9	Antennas	Up to 98" x 24" x 10"
6	Remote Radio Units (RRU's)	Up to 17" x 15" x 12"
15	Coax and/or Fiber Hybrid Cables	Up to 2" in Diameter
1	Meter	Up to 18" x 12" x 6"
1	Power Protection Cabinet	Up to 40" x 24" x 10"
1	25kW Diesel Generator	Up to 96" x 38" x 90"

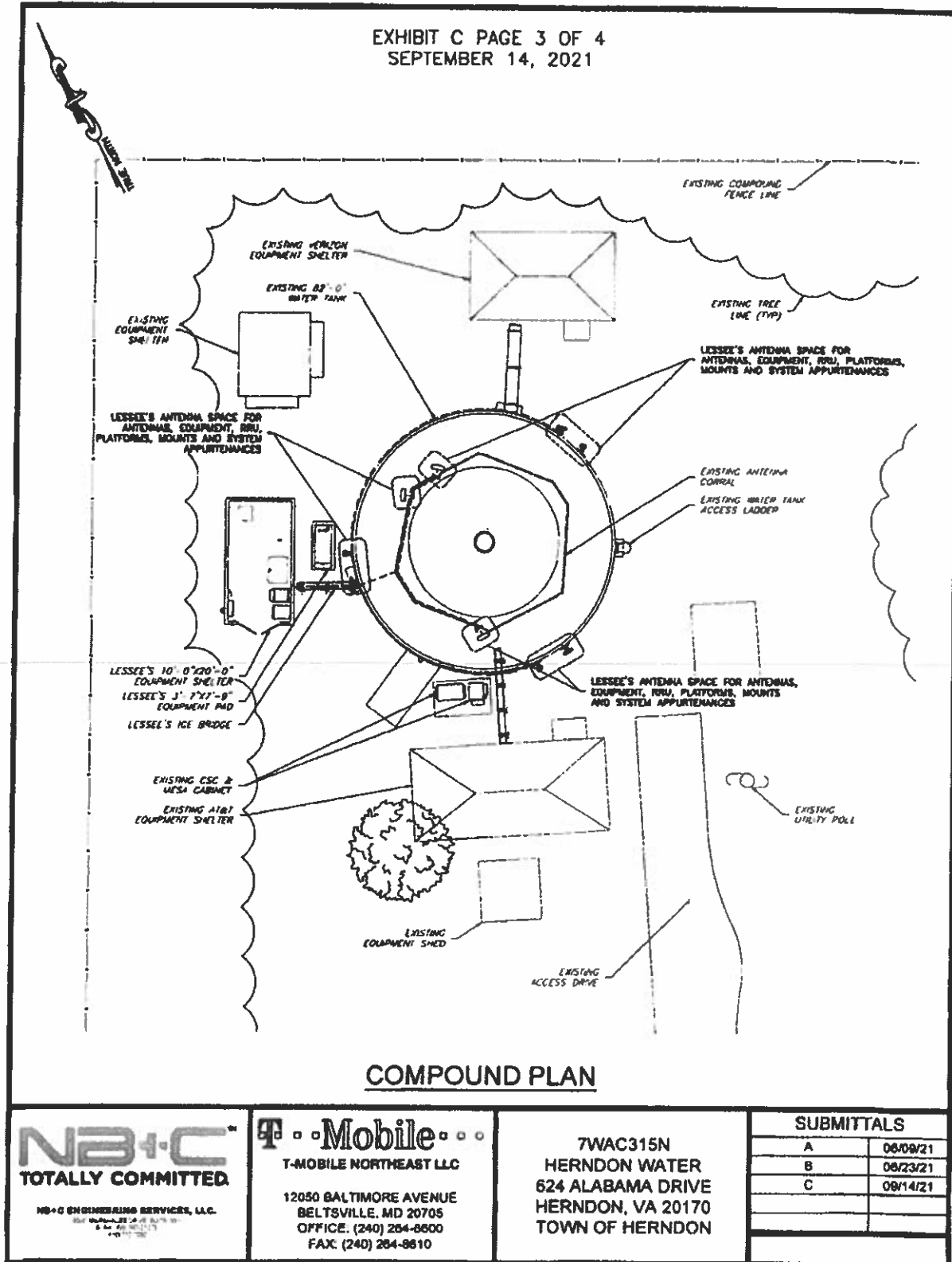
September 14, 2021
(public hearing)

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September 14, 2021
(public hearing)

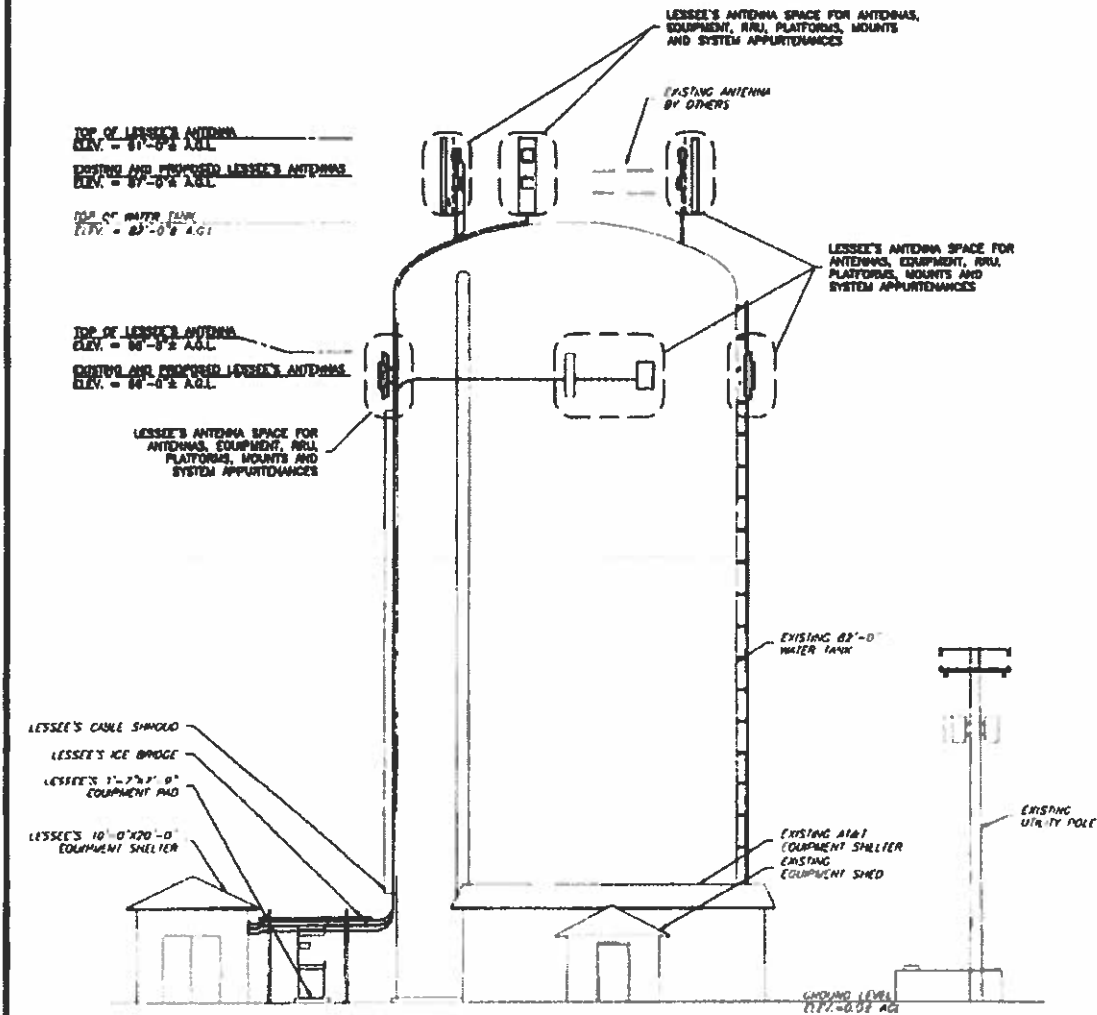
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September 14, 2021
(public hearing)

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EXHIBIT C PAGE 4 OF 4
SEPTEMBER 14, 2021



ELEVATION

NB+C
TOTALLY COMMITTED

NB+C ENGINEERING SERVICES, LLC
601 WASHINGTON DRIVE, SUITE 100
BETHESDA, MD 20814
(301) 221-1100

T-Mobile

T-MOBILE NORTHEAST LLC

12050 BALTIMORE AVENUE
BELTSVILLE, MD 20705
OFFICE (240) 284-8600
FAX (240) 284-8610

7WAC315N
HERNDON WATER
624 ALABAMA DRIVE
HERNDON, VA 20170
TOWN OF HERNDON

SUBMITTALS

A	08/09/21
B	08/23/21
C	08/14/21