



This does not represent a verbatim transcript of the Town Council meeting. Visit www.herndon-va.gov "agendas & minutes" to view agendas and videos. Copies of videotapes of the public hearing meetings are available on request by contacting HCTV at 703-689-2323. Work sessions are not videotaped, but audio files are available. Individuals not having access to the town's website may contact the Town Clerk's office at 703-435-6804 or town.clerk@herndon-va.gov.

HERNDON TOWN COUNCIL
Tuesday
November 16, 2021

The Town Council met in public session on Tuesday, November 16, 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; Robert Tang, Director of Finance; Page Kalapasev, Director of Information Technology; Scott Robinson, Director of Public Works; Elizabeth Gilleran, Director of Community Development; Mark Duceman, Transportation Program Manager; David Stromberg, Zoning Administrator; Christopher Garcia, Development Program Manager; and Amanda M. Kertz, Chief Deputy Town Clerk.

PLEDGE & CALL TO ORDER

Mayor Olem recognized the Arrow of Light Cub Scouts Pack 159, from Floris United Methodist Church who led the Pledge of Allegiance. Mayor Olem then called the meeting to order at 7:00 p.m., all members present and 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 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

**November 16, 2021
(public hearing)**

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.

Mayor Olem stated anyone could comment on Ordinance 21-O-22 during the Comments from the Audience portion of the meeting.

APPROVAL OF MINUTES

Vote on August 4, 2021

Town Council Work Session Minutes

On motion of Councilmember Dhakal, seconded by Councilmember Friedrichs and carried by unanimous roll call vote, the minutes of the August 4, 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."

Clarification

Following the vote, Mayor Olem asked the Chief Deputy Town Clerk to call on Vice Mayor del Aguila and Councilmember Alam again, as they had both voted "here." She stated that they needed to state "yes" or "no" on the minutes.

The Chief Deputy Town Clerk called on Vice Mayor del Aguila and Councilmember Alam to clarify their votes.

Vice Mayor del Aguila and Councilmember Alam both stated they had intended to vote "yes," and the record would reflect that intention.

ANNOUNCEMENTS

Kudos, HPD

Mayor Olem shared that she received a note from a resident, who gave a "special thank you" to HPD for their commitment to the community. An officer stopped by during a "trunk or treat event" and became one of the "highlights of the event," which the resident said is typical of HPD's commitment— to not just serve but to be a part of the community. She said it was one of the many reasons she is proud to call Herndon home. Mayor Olem said she also received a second note of thanks from a citizen to Chief DeBoard expressing appreciation for HPD.

GFOA Award

Mayor Olem congratulated the Department of Finance and the Budget Team, especially Budget Manager Maria Lee and Director of Finance Robert Tang, for receiving the Government Finance Officers (GFOA) Distinguished Budget Award for the budget beginning June 30, 2021. This was the town's 30th consecutive year receiving this award.

**November 16, 2021
(public hearing)**

The GFOA award is the highest form of recognition in governmental budgeting, and it is a significant achievement representing the town's commitment to the highest principles of governmental budgeting.

Town Council Strategic Initiatives Planning Meeting

Mayor Olem announced that the next Town Council Strategic Initiatives Planning Meeting would be on Thursday, December 2, 2021 beginning at 7:00 p.m., in the HPD community room.

Herndon Holiday Arts & Crafts Show

On Sunday, December 5, 2021, 10:00 a.m. to 4:00 p.m. at the Herndon Community Center, the Parks & Recreation Department would resume its annual tradition of hosting the Herndon Holiday Arts & Crafts Show, after taking 2020 off due to COVID.

ZOTA #21-03

For clarification, Mayor Olem stated that those there to address Council on item number 8 on tonight's agenda, Ordinance 21-O-22, to consider zoning ordinance text amendment, ZOTA #21-03, should address Council during "Comments from the Audience." She would remind everyone again when they got to that portion of the meeting.

3. COMMENTS FROM THE TOWN MANAGER

Mayor Olem recognized Town Manager, William H. Ashton II, for comments. Mr. Ashton stated the Distinguished Budget Award received this year was remarkable due to the significant challenges from COVID. This year they focused on the town's fiscal health and being flexible and adaptable to demands. Staff submitted the budget and ended up getting the award. He commented on the professionalism of Director of Finance Robert Tang, Budget Manager Maria Lee, and other Finance Department staff.

4. COMMENTS FROM THE TOWN COUNCIL

Vice Mayor del Aguila: Deferred his comments until other members of Council had spoken.

Councilmember Alam: No comments.

Councilmember Dhakal: No comments.

Councilmember Friedrichs: Thanked everyone for their kind words when her mother had surgery the past Tuesday, and she shared a personal update.

Councilmember Friedrichs enjoyed the Veterans Day Celebration that she attended with other members of Council and Mayor Olem. She said they had some great speakers and

**November 16, 2021
(public hearing)**

she thanked veterans who put their lives and health on the line. She congratulated staff on the budget award and thanked Bruce, a member of staff from DPW, who rescued a woman's glasses last week on election day.

Councilmember Regan: No comments.

Councilmember Singh: No comments.

Mayor Olem: Stated that she attended the Veterans Day Celebration with Councilmembers Friedrichs, Regan, and Singh. The speaker was an individual who won the Congressional Medal. He lived in Reston, and she would be glad to share what she learned about him. Mayor Olem said after the ceremony, she went to Chestnut Grove Cemetery to help take the Avenue of Flags down. She provided personal comments about the flags and visiting Wayne M. Kidwell's grave, who the local American Legion Chapter is named after. She said help is always welcome to help put the flags up at 11:00 a.m. and take them down at 4:00 p.m. every year on November 11.

Mayor Olem stated that December 4, 2021 is the tree lighting and Santa Claus would be arriving on a fire truck. Herndon High School would be singing holiday songs. December 11 is the Herndon Wintermarkt, which is held in the downtown. There would be music, arts, crafts, and food from 12 to 7:00 p.m. on Lynn street. She encouraged those interested to come out for these events.

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Olem asked Amanda Kertz, Chief Deputy Clerk, whether she received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and Ms. Kertz stated comments were provided to Council and entered into the record on: Item #5: 'Comments from the Audience' regarding: Unmaintained property – Morningside Court, and Ordinance 21-O-22, ZOTA #21-03, regarding ADUs.

Ms. Kertz stated that comments the Clerk's office received prior to closing the public hearing on October 26, 2021, have been carried over for the meeting record on: Item #8: Ordinance 21-O-22, ZOTA #21-03, regarding ADUs.

Ms. Kertz stated that a signed Transactional Disclosure Declaration was filed by: Vice Mayor del Aguila on item #9, which is Resolution 21-G-85, to approve the Town's participation in the proposed settlement of opioid-related claims against McKesson, Cardinal Health, AmerisourceBergen, Jannsen, and their related corporate entities. His signed statement for the record indicates that he has previously been an account manager for, and his employer has an ongoing relationship with Amerisource Bergen, one of the corporate entities named in the proposed settlement of opioid-related claims.

Although Vice Mayor del Aguila believes he is able to participate in the discussion and action on this transaction fairly, objectively, and in the public interest, he has indicated

**November 16, 2021
(public hearing)**

that he would recuse and disqualify himself from discussing and voting on this transaction, and that he would leave the dais. The signed statement has been filed with the Town Clerk and Town Attorney.

5. COMMENTS FROM THE AUDIENCE

Mayor Olem reminded everyone they could comment on any items that were not public hearings now, and they could comment on public hearing items during the public hearings. Mayor Olem reviewed the process for speaking and providing comments.

The following individuals came forward and provided comments:

- Karl Haase, 637 Wood Street, Herndon: Provided comments on Item #8: Ordinance 21-O-22, ZOTA #21-03, regarding ADUs and the language used in the ordinance.
- Jen Sadrak, 705 Morningside Court, Herndon: Prior to the meeting, provided written comments for the record, which are on file in the Town Clerk's office. She discussed complaints she filed with the town against 703 Morningside Court for the past four years, concerning health and safety issues and property values. She thought the house was unfit for occupancy and asked what the town could do.

Responding to Ms. Sadrak, Mayor Olem indicated she had spoken with the Town Attorney and the HOA. She stated they needed to find a legal way forward and that the town would get back to her.

- Jay Hadlock, 515 Alabama Drive, Herndon: Echoed the previous speakers' comments on Item #8: Ordinance 21-O-22, ZOTA #21-03, regarding ADUs and the language used in the ordinance.

Mr. Hadlock also discussed the upcoming budget and asked the Council to carefully consider the town's budget and the taxes and fees needed to fund it. He asked if there had been any allocation activity related to ARPA funds and how that would affect the upcoming budget.

Mr. Hadlock was also surprised to hear at a previous work session that there was consensus amongst Council to limit staff presentations. He provided comments about how staff presentations were important in explaining issues for Council and the public. He did not recall a vote on that matter and found it disrespectful of staff who spent time on the reports. He suggested that Council rethink having a time limit for staff presentations.

- Daniel Dukes, 148 Herndon Mill Circle, Herndon: Echoed the previous speakers' comments and expressed support for Ordinance 21-O-22, ZOTA #21-03. He was also the applicant on the first public hearing item and provided personal comments on the proposed special exception.

November 16, 2021
(public hearing)

PUBLIC HEARINGS

6. Resolution 21-G-83, to consider a special exception, SE #21-04, 148 Herndon Mill Circle, to permit an accessory dwelling unit through addition of a secondary kitchen within the first floor of the attached primary dwelling structure.

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, October 29, 2021 and Friday, November 5, 2021 issues.

Mayor Olem recognized Christopher Garcia, Development Program Manager. Mr. Garcia stated there was no new information and he would provide a quick presentation.

Mr. Garcia presented a PowerPoint dated November 16, 2021. He stated that this special exception was for an accessory dwelling unit (ADU) in a single-family attached residence in the RTC zoning district. He identified the location of the request and outlined site details. Mr. Garcia then reviewed the current ordinance and what was permitted by-right or by special exception.

Mr. Garcia then provided the details of the proposal and presented the proposed interim floor plan with a wet bar pending Council's decision and the final proposed floor plan.

Mr. Garcia reviewed the impacts of both denial and approval of this special exception. He indicated there were no anticipated negative impacts and the property would better meet the owner and occupant's family needs.

Mr. Garcia said the Planning Commission (PC) heard this application at its October 18, 2021 work session, and at the October 25, 2021 public hearing. During the work session, PC members discussed and requested clarification of the potential for conditioning the approval to include allowing the special exception to "run with the land" such that the secondary kitchen would not be require removal or demolition by the property owner prior to any future sale of the property.

Staff recommended approval of Special Exception application SE #21-04, that shall run with the land.

Responding to Councilmember Singh (whose question was inaudible due to his microphone being off), Mr. Garcia clarified the discussion about "running with the land" originated with the PC during their discussion at a work session and after consulting with Zoning Administrator. The PC then recommended approval with the revised conditions.

Councilmember Singh provided (inaudible) comments and asked a question about the wet bar.

**November 16, 2021
(public hearing)**

Mayor Olem asked Councilmember Singh to speak into the microphone.

Councilmember Singh provided additional (inaudible) questions. Mr. Garcia indicated if an owner wanted to have a wet bar in their dwelling unit, the maximize drain line size they could have was 1.5 inches by-right. In response to additional (inaudible) questions about the wet bar, Mr. Garcia said there would be no restriction on the drain line.

Mayor Olem invited the applicant forward to address the Council.

- Daniel Dukes, 148 Herndon Mill Circle, Herndon, Applicant: Mr. Dukes provided personal comments and said there was nothing special about his case or himself. He felt a disabled veteran should not have to stand before Council and say they were special. He felt granting this because of his status flew in the face of his service. For selfish reasons, he hoped the Council approved the special exception, but he thought that anyone should be able to do this if it was safe, reasonable, and did not affect anyone else. He emphasized that staff has been helpful throughout the process.

Councilmember Regan thanked Mr. Dukes for speaking and for his comments earlier that evening. He asked if the occupant of the unit would have access to the unit through the garage. Mr. Dukes said yes, but he understood it that the rear entry was what satisfied code.

Councilmember Singh asked how long this process had taken Mr. Dukes.

Mr. Dukes outlined the process timeline and said he bought materials last November and December. In January 2021, he realized that he needed to contact the town at the suggestion of an electrician. He said this has been going on since then. He understood that this was the age of COVID and provided personal comments about what might be occurring with the process and reiterated the ordinance needed to be considered.

Mayor Olem asked if any members of the audience wanted to provide public comment, seeing none she closed the public hearing and moved to Council level for action.

Councilmember Friedrichs moved to approve Resolution 21-G-83, Special Exception SE #21-04, as presented.

Motion seconded by Vice Mayor del Aguila.

Councilmember Friedrichs voiced support for Mr. Dukes' comments for approval.

Vice Mayor del Aguila thanked Mr. Dukes and said that he thought this was part of looking at housing revitalization. He expressed support for housing and thanked Mr. Dukes for his service.

**November 16, 2021
(public hearing)**

Councilmember Dhakal voiced support for the proposed ordinance and thanked Mr. Dukes for his service. He apologized for the inconvenience for what he went through and said this was why they needed to revisit these ordinances.

Councilmember Alam expressed support for this ordinance.

Councilmember Singh stated that the Council should take positive steps in changing policies that have no impact on others.

Mayor Olem provided comments about the process and taking time to do things appropriately and safety.

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."

Resolution 21-G-83, to consider Special Exception Application SE #21-04, to permit an accessory dwelling unit through addition of a secondary kitchen within the first floor of the attached primary dwelling structure in a Residential Townhouse Cluster, RTC, zoning district.

WHEREAS, the applicant, Daniel Dukes, has submitted a request for a special exception to permit an accessory dwelling unit through addition of a secondary kitchen within the first floor of the attached primary dwelling structure at 148 Herndon Mill Circle and identified as Fairfax County Tax Map #0171-27-0074; and

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

WHEREAS, following the public hearing, the Planning Commission has recommended that the application for the special exception be approved with conditions based upon the finding that the proposed use meets the purpose and intent of the Zoning Ordinance, in particular, Sections 78-71.1, 78-80.4, and 78-155.3; and

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

WHEREAS, the property and associated accessory dwelling unit shall be regulated under any future amendments to Section 78-80.4 and is not limited in perpetuity to the language in effect on the date of this resolution; and

**November 16, 2021
(public hearing)**

WHEREAS, if granted, the uses permitted under the special exception are pursuant to the Zoning Ordinance and this resolution; and

WHEREAS, if granted, the special exception may expire pursuant to Sections 78-155.3(f)(3) or Section 78-155.3(g) of the Zoning Ordinance; and

WHEREAS, if granted, the special exception may be amended pursuant to Section 78-155.3(j) of the Zoning Ordinance; and

WHEREAS, if granted, special exception may be revoked pursuant to Section 78-155.3(h) of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby:

Approves Special Exception Application SE #21-04, that shall run with the land and not be voided or extinguished from a change in ownership in accordance with the conditions set forth below to achieve compliance with the standards found in Zoning Ordinance Sections 78-80.4 and 78-155.3;

1. The accessory dwelling unit shall be constructed and utilized in substantial conformance with the original application and updated first floor plan received on October 12, 2021; and
2. The site shall maintain a minimum of three standard vehicle parking spaces measuring 8.5 feet by 18 feet. Use of garage or driveway space for any use other than parking shall not be considered maintaining a space.

7. Resolution 21-G-84, to consider a special exception, SE #21-05, 299 Herndon Parkway, Suite 108, to permit a personal service use consisting of cosmetics and aesthetic services within the first floor of a multi-tenant commercial office building.

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, October 29, 2021 and Friday, November 5, 2021 issues.

Mayor Olem recognized Christopher Garcia, Development Program Planner. Mr. Garcia stated there was no new information from the work session and he would provide a quick presentation.

Mr. Garcia presented a PowerPoint dated November 16, 2021. The proposed resolution was for a personal services use in the Commercial Office (CO) zoning district. He

**November 16, 2021
(public hearing)**

identified the location of the request and outlined site details. Mr. Garcia then outlined the current ordinance and what was permitted by-right or by special exception only.

Mr. Garcia then provided the details of the proposal and presented the proposed plan with conditions. The applicant requested to reconfigure 966 square feet of tenant space to provide cosmetic and skin care services. Mr. Garcia clarified that his PowerPoint had a typo and that 966 square feet was the correct amount. He then reviewed the impacts of both denial and approval of this special exception. The proposed conditions, which were discussed both at the Planning Commission (PC) level and at the Council's work session, would help mitigate some of the potential parking and traffic impacts. They included floor plan, space, and occupancy limits. The PC heard this application at its October 25, 2021 public hearing.

Staff and the PC recommended approval of Special Exception application SE #21-05, with conditions in accordance with the draft resolution.

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

Responding to queries from Councilmember Friedrichs, Mr. Garcia stated that the applicant offered the limited hours in their application, which would be compatible with the use and existing businesses at the site. He stated that because the hours were added as a condition, they would likely have to come back to the Council to change their hours (note: this was clarified later in the meeting). It was Mr. Garcia's understanding that the applicants were satisfied with the proposed resolution.

In response to queries from Councilmember Regan, Mr. Garcia stated that the conditions were recommendations, and that Council could change them.

Mayor Olem invited the applicant forward to address the Council.

- Phuong Le Tran, False Lashes and Beyond, 299 Herndon Parkway, Suite 108, Herndon, Applicant, provided brief comments. She also has a business location in Sterling where they were paying rent while waiting for approval from Herndon, which she stated had been difficult. She reviewed the proposed hours and said that she hoped with more staff, they could open more hours on the weekend. One appointment could take one to two hours and additional staff would be needed for longer hours. This was why they listed the hours like they did in the application.

Councilmember Singh asked a question of the applicant about the holidays (inaudible), to which Ms. Tran agreed.

Following Mr. Tran's comments, Mr. Garcia stated that he wished to make a retraction in his previous comments. The hours were not a condition for approval, it included limiting the number of people. The draft resolution was not tied to the hours of operation as he erroneously stated earlier in the meeting.

**November 16, 2021
(public hearing)**

Mayor Olem asked if any members of the audience wanted to provide public comment, and seeing none, she closed the public hearing and moved to Council level for action.

Councilmember Dhakal moved to approve Resolution 21-G-84, special exception SE #21-05, as presented.

Motion seconded by Councilmember Regan.

Councilmember Dhakal wished the applicant all the best for her business and thanked her for bringing her small business to town.

Councilmember Regan stated that as the nature of business changes, he expected more of these kinds of applications. He hoped the Council would be open to the types of businesses in commercial districts, if they are not creating anything that compromises the ability for neighboring places to do business. Similarly, as businesses change, he thought the Council should be as open-minded as possible about the hours of operation. He encouraged staff not to limit the hours of operation on future applications.

Councilmember Friedrichs expressed appreciation to the applicant and thanked her for her patience.

Councilmember Singh provided (inaudible) comments and stated that the town should consider administrative approval for such cases.

Vice Mayor del Aguila thanked the applicant for her business. He echoed Councilmember Singh's comments on potential reform for this process. He would like to bring this up at the next Town Council Strategic Initiatives Planning Meeting.

Mayor Olem welcomed the applicant and stated that she might want to consider being part of the Herndon Business Council, which was part of the Dulles Regional Chamber of Commerce.

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."

Resolution 21-G-84, to consider Special Exception Application SE #21-05, to permit a personal service use consisting of cosmetics and aesthetic services within the multi-tenant commercial office building in a Commercial Office, CO, zoning district.

WHEREAS, the applicants, Phuong Le Tran and Tommy Nguyen, have submitted a request for a special exception to permit a personal service use consisting of cosmetics and aesthetic services within the multi-tenant commercial office building at 299 Herndon Parkway, Suite 108, and identified as Fairfax County Tax Map #0171-13-0108; and

**November 16, 2021
(public hearing)**

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

WHEREAS, following the public hearing, the Planning Commission has recommended that the application for the special exception be approved with conditions based upon the finding that the proposed use meets the purpose and intent of the Zoning Ordinance, in particular, Sections 78-40.3 and 78-155.3; and

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

WHEREAS, the property and special exception shall be regulated under any future amendments to Section 78-40.3 and is not limited in perpetuity to the language in effect on the date of this resolution; and

WHEREAS, if granted, the uses permitted under the special exception are pursuant to the Zoning Ordinance and this resolution; and

WHEREAS, if granted, the special exception may expire pursuant to Sections 78-155.3(f)(3) or Section 78-155.3(g) of the Zoning Ordinance; and

WHEREAS, if granted, the special exception may be amended pursuant to Section 78-155.3(j) of the Zoning Ordinance; and

WHEREAS, if granted, special exception may be revoked pursuant to Section 78-155.3(h) of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby:

Approves Special Exception Application SE #21-05, in accordance with the conditions set forth below to achieve compliance with the standards found in Zoning Ordinance Section 78-155.3;

1. The personal services business space shall be constructed and utilized in substantial conformance with the original application and updated first floor plan received on August 17, 2021;
2. The business operations shall be conducted by appointment only and limited to six [6] total people, to include employees, occupying the space at any given time; and

**November 16, 2021
(public hearing)**

3. The allocation of retail sales floor space shall be limited to not more than 50 square feet within the tenant space.

8. Ordinance 21-O-22, to consider zoning ordinance text amendment, ZOTA #21-03, to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), to revise or establish new limitations on size, bulk, and setbacks for accessory dwelling units; to eliminate the special exception requirement for accessory dwelling units in certain situations; and to eliminate the minimum age and physical, mental, or cognitive disability requirements for accessory dwelling units. Action deferred from October 26, 2021.

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, October 8, 2021 and Friday, October 15, 2021 issues.

[Action on this item was deferred from the October 26, 2021 public hearing.]

Mayor Olem recognized Lesa Yeatts, Town Attorney, to outline the process resulting from the October 26 Town Council action.

Ms. Yeatts stated that the public hearing on this item was closed at the October 26, 2021 Town Council meeting, and a motion to defer action only was made and seconded. The matter was deferred to this meeting and the Council was at the point of acting. The Council could pick up with a motion, or Council could request further information at this time. She reminded the Council that the public hearing had been closed.

Mayor Olem recognized David Stromberg, Zoning Administrator, for comments.

Mr. Stromberg did not have additional comments. He was available to answer questions or provide clarifications.

There was discussion amongst Council and staff on this item.

Councilmember Friedrichs asked about the comments from one of the speakers that evening, who said there was some confusing language in the ordinance. She wondered if this was something the Council should be worried about.

Responding to Councilmember Friedrichs, Mr. Stromberg stated that the proposed ordinance language was a combination of strikethroughs and new language. Items that were not changing in the zoning ordinance were not mentioned, and he suggested going back and referencing the staff report where the changes were explained.

Councilmember Singh stated that Councilmember Regan had an accessory dwelling in the back of his house and asked if he should recuse himself on this item.

**November 16, 2021
(public hearing)**

Responding to Councilmember Singh, Ms. Yeatts stated that the question came up about who could benefit from this ordinance, which would include any individual who owns a single-family home. She stated that would not disqualify someone, and the fact that an individual has an existing second building that could be an ADU on their property, in her opinion, was no different than an individual who owns a single-family property where a basement or garage could now be created. She stated that it did not appear to be a required disclosure and she indicated that Councilmember Regan had asked her the question, to which she offered this same response.

Councilmember Regan stated that he appreciated Councilmember Singh bringing this up because he thought it was worth clarifying. He stated that he owns a single-family home in the town, and he does not have an accessory dwelling unit in it. The sink waste line was not a size that would qualify as an ADU under the current code and there were no cooking facilities. He reiterated that he has a single-family home that could be affected by this, and he thought many others did as well.

Mayor Olem stated that she has a single-family home and a shed. She had no intention of turning it into an ADU and she had to answer that question when she applied for her home-based business permit from the town.

There was a brief question and answer session between Councilmember Dhakal and Mr. Stromberg.

Councilmember Dhakal asked Mr. Stromberg what suggestions or recommendations he had on the Council allowing townhouses to have internal ADUs by-right. He asked for the intended benefits and the unintended consequences that could come from this change.

Replying to Councilmember Dhakal, Mr. Stromberg stated that while the special exception requirement would remain for townhouses, if passed, the proposed text amendment would still open the possibility up to many residents. The age and disability requirement would be removed for townhouses, which he thought would be beneficial. He thought it might be possible to make the change regarding townhouses but cautioned that had not been included in the prior discussions with the public. There could be some confusion among townhouse owners that they could add ADUs, but if there was no additional parking space, staff would deny the request.

Responding to further queries from Councilmember Dhakal, Mr. Stromberg stated that even if this were made by-right for townhouses, the individual would still have to go through the administrative process.

Councilmember Dhakal stated he had seen residents renting out rooms in houses, including townhouses and basements. He has heard concerns about parking. He affirmed that staff would still have to approve, but he thought this could reduce the time it takes to get a special exception. He asked if it made sense to remove the special exception requirement.

**November 16, 2021
(public hearing)**

Responding to Councilmember Dhakal, Mr. Stromberg stated that Council had that option, but staff was not prepared to recommend that, given the variety of townhouse communities within the town. Staff thought it made sense to allow the special exception process to remain for townhouses and to remove it for single-family residential units. He thought this was a big change from the existing ordinance. In his opinion, allowing this by-right for all residences might be too far in the other direction.

Councilmember Alam discussed her neighbor who rented out their basement and asked for the difference between that instance and the proposed ordinance.

Responding to Councilmember Alam, Mr. Stromberg stated it was difficult to know what the resident she mentioned had built. If they had bedrooms, a wet bar, and the restricted sink size, that was currently allowed by-right, if they met the definition of "family." If this item passed, her neighbor could have the full kitchen in that space, with three people in the basement, plus the definition of a family in the upper levels of the house.

Vice Mayor del Aguila stated he would support this, but he asked the Town Attorney if the town was going to be exposed to litigation, if they were discriminating against single-family homes over townhouses.

Mr. Stromberg stated that the proposed amendment would expand private property rights so he did not think it would open the town up for litigation.

Ms. Yeatts stated that, as the Council discussed at their work session, very broad enabling legislation for zoning was different uses in different places.

Responding to queries Mayor Olem, Mr. Stromberg agreed that if a resident wanted to make changes, they would still have to go through staff to obtain permits. He stated residents were still subject to all stormwater and the other existing zoning ordinance requirements.

Responding to further queries from Mayor Olem on how long these types of projects might take, Mr. Stromberg stated that would depend on the amount of work anticipated. A project with all interior work would be a shorter timeframe. When looking at a detached structure or large addition, there were additional requirements that would be more time consuming.

Adding to Mr. Stromberg's comments, William H. Ashton II, Town Manager, stated that the quality of the submission would also factor into the time an application took. He stated that if the applicant provides a sub-standard submission there was an iterative process to obtain a better submission, and that would take additional time.

Mayor Olem stated homeowners' association requirements would also factor into the applicability of the proposed ordinance.

**November 16, 2021
(public hearing)**

Responding to queries from Councilmember Singh, Mr. Stromberg clarified that the proposed text amendment would not change the amount of buildable footprint on a property. It would change the use that could occur in the building footprint.

Councilmember Singh provided comments about how he thought that staff had not analyzed the ordinance's impact on the town.

Mayor Olem asked if Councilmember Singh had a question for staff.

Councilmember Singh repeated that he did not think staff had done the analysis on the impacts of this item, or how it related to the Comprehensive Plan. He asked Mr. Stromberg if he was correct.

Mayor Olem again asked for a question so Council could move onto the next phase.

Councilmember Singh again asked about staff's analysis, to which Mayor Olem replied that she thought Mr. Stromberg had answered that question.

Responding to the discussion, Mr. Stromberg stated there was no impact to stormwater management, and the utilities department would not have a concern about water and sewer capacity until there were changes from single-family to multifamily units. In this text amendment, the density increases would not be significant enough to make an impact that would cause concern.

Councilmember Singh stated that he would disagree and provided comments about his neighborhood.

Mayor Olem stated that Council was asking questions and was not debating with staff.

Councilmember Dhakal emphasized that he was in favor of allowing townhouses the option of adding internal ADUs by-right. He stated because residents were already doing so, this change could provide a legal and safe way to add ADUs. He stated that he wanted to make a motion but was not sure what he would have to do, or if he needed to ask the Town Attorney.

Responding to Councilmember Dhakal's comments, Councilmember Friedrichs stated that Mr. Stromberg mentioned that the proposed ordinance has gone through the PC with multiple public hearings, and that version did not include townhouses. She asked the Town Attorney for clarification.

Ms. Yeatts stated that what is before the Town Council had gone through the PC.

Councilmember Friedrichs stated it was her understanding that the townhome part had not gone through the PC, to which Ms. Yeatts agreed.

**November 16, 2021
(public hearing)**

Councilmember Friedrichs asked if it was appropriate to make the amendment to include townhouses or if that needed to go back through the PC for public hearings. She was considering the ramifications if the Council made this change.

Replying to Councilmember Friedrichs, Ms. Yeatts indicated that when an item had gone through the PC, and the Town Council public hearing had been closed, it was likely not the best practice to amend the language to the extent the Councilmember suggested. The safer route would be to go back through the process.

Mr. Stromberg echoed Ms. Yeatts' comments. He stated the townhouses have been part of the text amendment since the beginning, and the recommendation from the PC and staff was to remain a special exception use.

There was a question-and-answer session between Councilmember Singh and Mr. Stromberg about how the item had gone through the process.

Councilmember Singh asked what need staff was responding to, because all the places he looked at where this was done were dense, like cities. That was where he thought there was a need for inexpensive homes.

Responding to Councilmember Singh, Mr. Stromberg stated that the PC and Council started looking at this issue because previous applicants had a similar criticism to the applicant earlier that evening, which was that the special exception process was very long and expensive. Staff also found that the special exception process resulted in similar conditions every time, so they took the common conditions and codified them so they could be administratively applied to ADUs. Staff believes that ADUs have enough protections in place with this change, while keeping property owners from going through the long special exception process.

Councilmember Singh told Mr. Stromberg that he was agreeing with him that "there was really no consideration...demand for ADUs...in Herndon."

Responding to Councilmember Singh, Mr. Stromberg stated that the PC also submitted a letter to the Council, asking to look at the ADUs as part of the housing strategy. Through this process, the staff and PC learned that this would not solve housing issues, but it would be part of the community's overall housing strategy and would provide unique opportunities for property owners.

Councilmember Singh continued, stating that people who want to leave do so for various reasons. He gave his thoughts on the economics of ADUs, and he did not think staff had considered that.

Mayor Olem asked Councilmember Singh if he had a specific question for staff.

**November 16, 2021
(public hearing)**

Responding to Councilmember Singh's comments about the analysis, Mr. Stromberg stated that the proposed ordinance was crafted in a way that staff believes it would not have negative impacts on adjacent property owners or values.

Councilmember Dhakal asked what the rationale was to make the townhouses go through the special exception while the single-family houses could have ADUs by-right.

Responding to Councilmember Dhakal, Mr. Stromberg stated that the largest piece was that in a townhouse walls are shared with adjacent property owners. Townhouse residents do not have the ability to add the same features as single-family lot residents. Parking is also often varied and could be limited.

Councilmember Dhakal stated that he was referring to internal ADUs and asked if that could be done under staff approval rather than by special exception.

Responding to Councilmember Dhakal, Mr. Stromberg stated staff was capable to review ordinances that were adopted. Whether a townhouse should go through the special exception process in this instance was a policy question for Council. If the Council chose to make changes to the process, staff could apply the ordinance.

Responding to queries from Mayor Olem, Mr. Stromberg agreed that there was no public notification requirement for items that fell under administrative approval.

Responding to queries from Councilmember Regan, Mr. Stromberg agreed that the Council could ask the PC to look at ADUs in townhouses as a separate matter.

Councilmember Regan recalled that Councilmember Singh had advocated that stormwater be a priority issue during a Town Council Strategic Initiative Planning Meeting. He asked if the Council could look at stormwater as a separate issue, to which Mr. Stromberg agreed that they could.

Responding to Vice Mayor del Aguila's request for the definition of a family, Mr. Stromberg stated it was four or fewer unrelated people, any number of people related to the second degree of consanguinity, two unrelated people and their children, and a group home as defined by the Code of Virginia, which is up to eight people.

In addressing Councilmember Regan's suggestion to study stormwater, Councilmember Singh thought that meant "your policies (are) now going to impose cost on the entire town." He asked, "should you not discuss what the impact is before you approve the policy, rather than after the fact."

Mr. Stromberg thought Councilmember Regan's proposal was to look at stormwater challenges throughout the town, notwithstanding this change. He reiterated that the text amendment would not allow an increase in building or impervious coverage over what is currently allowed.

**November 16, 2021
(public hearing)**

There was a question-and-answer period with Councilmember Singh and Mr. Stromberg, where Councilmember Singh discussed the major impacts that he saw from this ordinance.

Responding to Councilmember Singh, Mr. Stromberg emphasized that the building coverage allowed under this text ordinance would be the same as what is allowed currently.

Councilmember Singh said that he disagreed.

Mayor Olem asked Councilmember Singh to be respectful because staff would not disagree with a Councilmember.

Ms. Yeatts provided clarification and stated for the benefit of anyone watching, if this item were passed, it would be the law of the town, not the Zoning Administrator's edict.

Mayor Olem stated the Council had two options before them, which were Attachment 1, which was the ordinance presented to the PC, and Attachment 2, which included the PC's proposed changes. Both options had Councilmember Regan's suggested language regarding the maximum height.

Ms. Yeatts clarified and stated that one was what was originally brought to the PC and the other is what the PC recommended and passed. To ensure Council would vote on the correct item, Ms. Yeatts asked Mr. Stromberg to clarify the options.

Mr. Stromberg stated that both Attachment 1 and Attachment 2 had the height change to 15 feet. The difference was that Attachment 1 did not contain the additional 10-foot separation from other accessory structures that the PC recommended. The extra 10 feet was in Attachment 2.

Mayor Olem asked Council to clearly state which version they were considering when making motions.

Motion to Defer Action (Revised by Motion Maker)

Councilmember Singh moved to defer Ordinance 21-O-22 for the foreseeable future and to reconsider the matter of Accessory Dwelling Units (ADUs) again after the Council, among other things:

- Receiving Citizen Input;
- Receiving Business Input;
- Evaluating demand for ADUs, particularly demand for affordable ADUs by new entrants into the workforce;

**November 16, 2021
(public hearing)**

- Reviewing the literature on the economics of ADUs;
- Evaluating limitations of size, bulk and setbacks for ADUs;
- Evaluating the financial feasibility of ADUs;
- Reviewing policies developed by other Virginia jurisdictions including the City of Alexandria;
- Examining Issues that have arisen in Oregon, California, and other states and their applicability to Herndon;
- Recommending policy alternatives including the need to revise the Comprehensive Plan with a focus on storm-water discharges, drinking water use, sewer capacity, parking availability and transportation effects; and
- Developing appropriate ADU Policy Recommendations.

Clarification

Ms. Yeatts stated that since the public hearing was closed, there was no process to study, request public comment, or to keep this matter open indefinitely. She asked for clarification from the motion maker and suggested that perhaps he meant to leave this item on the table, to begin it again with a new process to study.

Councilmember Singh asked if the Town Attorney wanted him to table the motion.

Ms. Yeatts replied that there was no mechanism in land use law to allow the studies, public hearings, and the process that Councilmember Singh had described to occur legitimately and legally to result in a new zoning ordinance text amendment.

Councilmember Singh stated he did not know, but he knew that the City of Alexandria followed a process like he just mentioned. He was sure they did it under Virginia law.

Ms. Yeatts stated that the City of Alexandria followed the zoning ordinance text amendment process, like the town had just gone through. To her, it sounded like Councilmember Singh wanted a “do over” to start this process over.

Councilmember Singh agreed with the Town Attorney and stated it could be like what the town went through for the Metro Plan.

Mayor Olem suggested that Councilmember Singh may want to move to deny Ordinance 21-O-22 and bring back something new in the future. She asked if that was what he wanted to do, because the public hearing had been closed.

Councilmember Singh agreed and stated he could move to deny the ordinance.

**November 16, 2021
(public hearing)**

Mayor Olem emphasized that the Council could not reopen the public hearing, as the Town Attorney had stated. The Council could deny the ordinance, move one of the two presented options, or defer it.

Ms. Yeatts stated that if Councilmember Singh's goal were to obtain the studies, input, and other things he mentioned, the process to do that would be through a zoning ordinance text amendment process, which was what Alexandria did. Deferring the item would leave the matter in this body, with the public hearing being closed, and no further powers.

Councilmember Singh asked if the Town Attorney was saying that this either "passes or denies" and that "there was no other option."

Ms. Yeatts stated the Council could continue the matter for a very limited period, but that does not sound like that would accomplish what Councilmember Singh said he was trying to accomplish.

Mayor Olem stated that he would not be able to have a study with a continuation, and the Town Attorney stated there would be no public comment at that time.

By continuing the matter, Ms. Yeatts stated that the Council would be at the same place it was now, with no way to get the Council additional information. She stated they would have, in her opinion, a "flawed land use matter."

Motion to Deny (FAILED)

Councilmember Singh, the motion maker, stated that in a short period of time, Council could not discuss all the issues, so it would be fruitless to do that. He would then move to deny or "disapprove" Ordinance 21-O-22.

Motion seconded by Councilmember Alam.

Councilmember Singh provided comments on the motion, discussing what he was seeing around the country and the economics of ADUs. The City of Alexandria took approximately two years to evaluate the need for ADUs and he thought that was the typical process. He thought the town should do this the "right way," which would be better than what other localities had done. He thought that if those seeking special exceptions were going to do something different, they should have come to the Council first and the Council should have given exclusive permission. This was a separate issue, but he thought if they wanted to make process in Herndon, they should take a different step.

Councilmember Alam echoed Councilmember Singh's comments.

**November 16, 2021
(public hearing)**

Clarification

Councilmember Regan said he had a question of the parliamentary, and asked if a vote against denial was the same as a vote to approve, to which Ms. Yeatts said no.

Councilmember Regan stated that, there would be a motion to deny, and if that passed, the matter was terminated. If that failed, he asked if someone could make a motion to approve.

Ms. Yeatts agreed that if it failed, a Councilmember could make another motion.

Councilmember Regan stated he had comments in mind, but Mr. Dukes made an eloquent argument against the age and disability requirements in place right now for townhouses. He also thought other aspects of the existing ordinance were not practical. Councilmember Regan reviewed the process where the Council asked the PC to review this matter and how they spent five months looking at it. He thought what the Council was considering was a cleaner, predictable ADU regulation that was closer to what other jurisdictions were doing without having many problems. He was in favor of the ordinance and against the denial.

Councilmember Regan stated that the very real issues Councilmember Dhakal discussed could be considered in a separate process, which he did not think would happen any faster if it were tied to this ordinance. He would support asking the PC to look at the townhouse matter. Regarding stormwater, he stated there were issues and the Council should commit time and resources to that matter, regardless of what happened with the proposed ordinance that evening.

Vice Mayor del Aguila agreed with what Councilmember Regan said and thought this would require more study as it evolved. He said that Councilmember Singh brought up good points about ADUs being feasible and affordable, which Vice Mayor del Aguila briefly addressed. He thought the Council should study the townhome issue more. He thought this was part of housing revitalization in Herndon that should be addressed, and the Council should make the process easier if they could.

Mayor Olem stated that there was some confusion from the public input that Council received. She thought Council could tweak the ordinance, but whether this body wanted to do that, they would find out.

Vote on Motion to Deny (Failed)

The question was called on the motion, which failed by a 2-5 roll call vote. The vote was: Councilmember Singh and Mayor Olem voting "Aye." Councilmembers Alam, Dhakal, Friedrichs, Regan, and Vice Mayor del Aguila voting "No."

**November 16, 2021
(public hearing)**

Clarification Following the Vote

Mayor Olem stated that she did not hear Councilmember Alam's vote, and several members of Council responded that Councilmember Alam had voted "no." Therefore, the matter failed, with a vote of 2-5.

Councilmember Regan asked to make a new motion.

Councilmember Alam stated that she was a bit confused. Mayor Olem replied that the last vote had failed, 2-5.

**Motion to Approve (Approved)
Attachment 1**

Councilmember Regan moved to approve Ordinance 21-O-22, to consider zoning ordinance text amendment, ZOTA #21-03, to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), to revise or establish new limitations on size, bulk, and setbacks for accessory dwelling units; to eliminate the special exception requirement for accessory dwelling units in certain situations; and to eliminate the minimum age and physical, mental, or cognitive disability requirements for accessory dwelling units, as per:

- **Attachment 1: Draft ordinance presented to planning commission with Councilmember Regan's suggested wording regarding maximum height.**

Motion seconded by Vice Mayor del Aguila.

Councilmember Friedrichs expressed her support for this item and echoed the reasons her colleagues stated. The people told the Council they want this, the PC knows what they are doing, and they did their due diligence. She appreciated what others have done to bring this ordinance before Council and she thought it would help people, like Mr. Dukes.

Councilmember Friedrichs stated that stormwater was a problem throughout the town. She indicated that she had mentioned several times that she would like to take a comprehensive look at this issue. Given that ADUs could not cover any more ground than building an addition on a house through the proposed ordinance, she did not see an issue and expressed support for this motion.

Councilmember Dhakal voiced support for this item and urged Council to initiate the "due diligence" to look at townhouses as well. He understood there were many things to uncover and encouraged starting the process. Some residents expressed concern that this could change the character of the town's neighborhoods, and he thought both viewpoints should be heard. Some held views that ADUs increase the supply of affordable housing, and he thought it could provide options even if it was not the whole solution.

**November 16, 2021
(public hearing)**

Councilmember Singh asked if the motion on the table was to remove any age-related requirements.

Ms. Yeatts stated that if the motion maker could not clarify, Councilmember Singh was looking at the staff member to answer his question. She addressed Mayor Olem, stating it was her call at this point in the proceeding.

Mayor Olem stated that was part of the ordinance that was originally on the table and that yes, the age would be taken out.

Mayor Olem stated the proposal would also take out the requirement to remove the cooking area, larger sink, and pipe from the dwelling.

Councilmember Singh stated that meant it would run with the land.

Mayor Olem stated it would be a new ordinance that did not require a special exception. Residents would still have to obtain permits to make their improvements and so forth.

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-22, to consider zoning ordinance text amendment, ZOTA #21-03, to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), to revise or establish new limitations on size, bulk, and setbacks for accessory dwelling units; to eliminate the special exception requirement for accessory dwelling units in certain situations; and to eliminate the minimum age and physical, mental, or cognitive disability requirements for accessory dwelling units.

Sec. 78-71.1. - Residential use category.

- (a) *Characteristics.* The residential use category is characterized by the residential occupancy of a dwelling or residential facility by an individual or a household meeting the definition of a family. Tenancy is arranged on a month-to-month or longer basis.
- (b) *Examples.* Example use types include single-family detached dwellings, duplex dwellings, multi-family dwellings, assisted living for the elderly or persons with disabilities, or townhouse dwellings. Group homes are also included as described in the Code of Virginia, § 15.2-2291.

**November 16, 2021
(public hearing)**

(c) *Similar use types, accessory uses and prohibited use types.*

- (1) *Transient lodging.* Transient lodging is not permitted in the residential use category. Transient lodging, including, hotels, motels, inns, conference centers, boarding houses and lodging houses, are in the lodging businesses category.
- (2) *Convalescent home.* Convalescent home is in the institutional and community services use category.
- (3) *Home-based businesses.* Home-based businesses, including childcare in the home, are permitted as accessory uses that are subject to additional standards. (See section 78-80.5).
- (4) *Bed and breakfast and short-term rentals.* Bed and breakfast establishments are permitted as accessory uses subject to additional standards in 78-80.4(d), bed and breakfast establishment and 78-80.4(u), short-term rentals.
- (5) *Accessory dwelling.* Accessory dwelling units are permitted as accessory uses subject to additional standards. ~~See Article VIII, Accessory Uses and Structures. As listed in Section 78-80.4(a).~~

(d) *Residential use category specific use standards.* All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply, unless, in the judgment of the reviewing authority, exceptional circumstances warrant adjustment:

- (3) *Establishment of unauthorized dwelling units prohibited.* Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is prohibited ~~and subject to the following except when legally established as an accessory use pursuant to Section 78-80.4(a).~~

~~a. *Change in use or special exception.* Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is not permitted except in accordance with procedures for a change in use as authorized by the town or unless an accessory dwelling unit has been approved through a special exception.~~

ba. Conditions constituting an unauthorized dwelling unit. An unauthorized dwelling unit within a building shall be presumed to have been created when contiguous areas for living, sleeping, eating, cooking, and sanitation are designed in such a manner as to establish a distinct, separate, and self-contained living or housekeeping unit. The existence of any one of the following conditions shall be considered to be an unauthorized dwelling unit, *when established absent approval of a legally established accessory dwelling pursuant to 78-80.4(a).*

**November 16, 2021
(public hearing)**

1. A secured internal access/connection is maintained that prevents full access to all of the common living areas (exclusive of private bedroom/bath areas) to all occupants of the dwelling unit.
2. More than one assigned address or more than one electric, water or gas meter serving the building.
3. Use of part of a previously approved dwelling unit for an additional dwelling unit providing complete, independent living facilities for a single-family dwelling including provisions for living, sleeping, eating, or sanitation.

~~e. *Additional procedures.* The building official and the zoning administrator may request additional administrative steps, such as the recording of a "declaration of use", when such steps are determined to be warranted by specific conditions, such as a separate exterior entry. The creation of a dwelling unit shall comply with all rules, regulations, ordinances and other requirements of the town of Herndon. Building permits, inspections, and approvals are required for all building, electrical, mechanical, or plumbing work performed. Where a conflict arises between these standards and other requirements, the most restrictive shall govern.~~

Section 78-80.1. – Accessory uses and structures.

- (a) *Purpose and intent.* Sections 78-80.1 through 78-80.5 authorize the establishment of accessory uses and structures that are incidental and customarily subordinate to principal uses. The town's intent is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, and so long as they comply with the standards set forth in this section to reduce potentially adverse impacts on surrounding properties. Some accessory uses are required (such as parking), some are permitted by right (such as signs), some are permitted as special exceptions ~~(such as accessory dwelling units)~~ and many are allowed in planned development districts.

- (c) *Standards for all accessory uses and structures.* The following standards apply to all accessory uses and structures:
- (1) *Relation to principal use.* Any accessory use or structure shall directly serve the principal use or structure.
 - (2) *Incidental to primary use.* Any accessory use or structure be customarily accessory and clearly incidental to the principal use.
 - (3) *Subordinate in nature.* Any accessory use or structure shall be subordinate in area, extent, and purpose to the principal use or structure. An accessory use may not exceed 25 percent of the floor area shared with the principal use, and

**November 16, 2021
(public hearing)**

any combination of more than two accessory uses may not exceed 50 percent of the floor area shared with the principal use, *unless otherwise specified in this section.*

- (4) *Ownership.* Any accessory use or structure shall be owned or operated by the same entity owning the principal use or structure.
- (5) *Location.* Any accessory use or structure shall be located on the same lot as the principal use or structure ~~or on a contiguous lot.~~
- (6) *Compliance.* Together with the principal use or structure, any accessory use or structure shall not violate the bulk, density, parking, landscaping, or open space standards of this chapter. Therefore, all accessory uses and structures shall conform to the applicable requirements of this chapter, including the use regulations in Article VII, Use Regulations, and the dimensional standards in individual zoning districts.

Sec. 78-80.2. - Table of permitted and allowed accessory uses and structures.

- (c) *Table of permitted and allowed accessory uses and structures.* The Table of Permitted and Allowed Accessory Uses and Structures, Table 78-80.2. C. identifies the uses permitted within base districts. (See also section 78-70.2(d): Table of Principal Permitted and Allowed Uses, and Table 78-90.1(b), Allowed Temporary Uses and Structures; See also use specific standards in section 78-80.4)

Table 78-80.2(c): TABLE OF PERMITTED AND ALLOWED ACCESSORY USES & STRUCTURES

KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;

Z=Use Allowed Subject to Zoning Map Amendment Approval

Notes: 1. A blank cell means the use is prohibited in the district; 2. Uses may be subject to use specific standards noted in the last column.

**** For Permitted Accessory Uses in PD-TOC see section 78-50.8; For Accessory Uses Permitted and Allowed in PD-W see section 78-50.9**

	Residential Districts				Business Districts				Planned Development District					Supp'l Reqs.
ACCESSORY USE	R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-UR	PD-TOC PD-W	See Section

**November 16, 2021
(public hearing)**

Accessory Dwelling Unit - Internal or Attached	S P	S P	S						Z P		P	P	**	§78-80.4(a)
Accessory Dwelling Unit - Detached	P	P							P		P	P		§78-80.4(a)
Accessory Food Preparation Area - Secondary Kitchen	S P	S P	S P		S				S P		S P	S P	**	§78-80.4(b)
Accessory Food Preparation - Wet Bar	P	P	P	P	P	P	P	P	P	P	P	P	**	§78-80.4(b)

Sec. 78-80.3. - Accessory structure standards.

Accessory structures and features shall comply with the following zoning-district specific standards.

- (a) *Accessory structures in residential districts.* Accessory structures in residential district shall meet the following standards, *unless otherwise specified in this section:*
- (1) *Location.* Accessory structures, except fences and walls, shall not be located within a required setback or required side yard, except accessory buildings on corner lots may be located within the side yard. Accessory structures except fences and walls shall be located so the structure is not closer than:
 - a. Five feet to any alley line;
 - b. Two feet to any side or rear lot line, except for a townhouse dwelling lot, where the accessory structure may be located on the side or rear lot line.
 - c. Ten feet to the principal dwelling for any single-family detached or duplex dwelling.
 - (2) *Maximum height.* The height of an accessory structure shall not exceed the lesser of the height of the principal structure on the site, or 15 feet.

**November 16, 2021
(public hearing)**

- (3) *Maximum floor area.* On any lot, the combined floor area of all detached accessory structures shall not be greater than 50 percent of the floor area of the principal structure, unless otherwise specified in this chapter.
- (4) *Residential occupancy.* Residential occupancy shall not be allowed in any accessory structure except under the provisions of section 78-80.4, accessory dwelling unit.
- (5) *Temporary accessory structures.* Temporary accessory structures shall be governed by the procedures and standards of section 78-155.6(e)(4), temporary use site plan, and Article IX, Temporary Uses and Structures.
- ~~(6) *Required approvals.* On lots with single family detached or duplex dwellings, the construction, replacement or enlargement of an accessory building when the alteration is:~~
 - ~~a. Less than 750 square feet may require a building permit and a building location survey in accordance with section 78-155.6(e)(1).~~
 - ~~b. Seven hundred fifty square feet of floor area or more must be approved through a single lot development plan in accordance with section 78-155.6(e)(2).~~

Sec. 78-80.4. - Standards for specific accessory uses and structures by use type.

Accessory uses and structures listed below shall comply with the following specific standards.

- (a) *Accessory dwelling unit.* An accessory dwelling unit is permitted in the zoning districts specified in Table 78-80.2(c) and shall comply with the following standards:
 - (1) *Special exception required.* ~~An accessory dwelling unit shall be permitted by special exception in accordance with section 78-155.3 and Article VIII, Accessory Use Regulations. A special exception shall be required when an internal accessory dwelling unit is proposed in a single family attached townhouse.~~
 - (2) *Compliance with building code and zoning standards.* An accessory dwelling unit shall comply with all applicable building code and development standards. ~~for dwelling units in the zoning district in which the accessory dwelling unit will be located. An accessory dwelling unit shall also comply with all applicable standards for the principal dwelling.~~

**November 16, 2021
(public hearing)**

- (3) *No mobile homes or recreational vehicles as accessory dwellings.* Mobile homes, recreational vehicles, travel trailers, *manufactured homes*, and the like shall not be used as accessory dwelling units.
- (4) *One accessory unit per lot.* There shall be no more than one accessory dwelling unit on a lot in addition to the principal dwelling.
- (5) *Size limit.*
 - a. *Internal or attached.* The floor area of an *internal or attached* accessory dwelling unit shall not exceed ~~35~~ 40 percent of the gross floor area of the principal dwelling, or 1,200 square feet, whichever is less.
 - b. *Detached.* The maximum gross floor area of a detached accessory dwelling unit shall not exceed 900 square feet.
 - 1. Covered or screened porches do not count towards the maximum floor area. Porches otherwise enclosed do not count towards the maximum floor area unless the space is conditioned.
 - 2. Detached accessory dwelling units and any associated porches count towards the minimum lot coverage allowed in the underlying district.
- (6) *Location.*
 - a. *Detached accessory dwelling units are limited to the rear yard.* A detached accessory dwelling unit shall have a minimum setback of 10 feet from the rear and side property lines and 10 feet from the principal structure.
 - 1. *Existing accessory structures.* A detached accessory dwelling may be incorporated into a detached accessory structure that does not meet the above setbacks provided the detached accessory structure legally existed on or before October 26, 2021.
 - 2. *Encroachments.* Encroachments into the setback are limited to the following features and must comply with the provisions of Table 78-21(f): Chimney, eaves, trim, fascia boards, sills, cornices, bay windows, patios, retaining walls, terraces, and similar features (other than decks located more than two feet above grade).
 - b. *Attached accessory dwelling units shall meet the setback requirements of the underlying zoning district.*

**November 16, 2021
(public hearing)**

(67) *Entrance location.* ~~If the accessory dwelling unit is a part of the principal structure on the lot, any external entrance for the accessory dwelling unit shall be located on the side or rear of the structure.~~

- a. *The external entrance for internal or attached accessory dwelling units shall be located on the side or the rear of the structure. On corner lots, the entrance may face the secondary front setback.*
- b. *A sliding door is not permitted as the main exterior entrance to the accessory dwelling unit.*

(78) *Limit on bedrooms. and occupancy.* An accessory dwelling unit shall not contain more than two bedrooms or be occupied by more than ~~two~~ three persons.

(89) *Occupancy standards.* ~~An accessory dwelling unit shall be subject to the dwelling unit occupancy standards of section 78-170.6. Either the accessory dwelling unit or the principal dwelling shall be occupied by the owner of the principal dwelling as their primary residence. If the owner of the principal dwelling ceases to occupy one of the dwelling units as their primary residence, the entire property is limited to one family as defined in Section 78-180. Additionally, either the accessory dwelling unit or the principal dwelling on a property shall be occupied by at least one person who meets the following qualifications:~~

- a. ~~The person is at least 62 years of age; or~~
- b. ~~The person has a physical, mental, or cognitive disability:~~
 1. ~~As certified by the Social Security Administration, the Veterans Administration, or the Railroad Retirement Board; or~~
 2. ~~As confirmed in writing signed by a licensed medical practitioner or a practitioner licensed in an allied health field.~~
 3. ~~This section shall not be deemed to exclude individuals who meet the qualifications above and are able to seek or engage in employment.~~

(910) *Parking.* There shall be a minimum of one off-street parking space with convenient access to a street for the accessory dwelling unit. The off-street parking shall be in addition to the requirements specified for the principal dwelling. ~~the off-street spaces required in Article X – Parking, Loading, and Circulation, for the principal dwelling.~~

(1011) *Not to be sold separately.* Accessory dwelling units shall not be sold apart from the principal dwelling upon the same lot where they are located.

**November 16, 2021
(public hearing)**

~~(12) Utilities. Water and sewer service shall be provided from the principal structure and not from new taps to the main lines.~~

~~(112) Compliance with health, safety, sanitation and building code regulations.~~ Any accessory dwelling unit shall meet the applicable code regulations for building, safety, health, and sanitation standards. During reasonable hours upon prior notice, the applicant shall make provisions to allow officials to make the appropriate inspections.

~~(1213) Zoning permit and special exception time limits.~~ A zoning inspection permit is required for an accessory dwelling unit. The ~~special exception and~~ zoning inspection permit for the accessory dwelling unit shall expire ~~at any time the use does not comply with any of the conditions of approval or the terms of this chapter.~~

~~a. Ninety days from the date on which the owner no longer occupies the property. The owner shall notify the zoning administrator at such time as the owner no longer occupies the property.~~

~~b. Two years from the date of approval of the special exception if required improvements have not been completed.~~

~~c. One year from the date the use ceased.~~

~~d. At any time the use does not comply with any of the conditions of approval or the terms of this chapter.~~

~~(1314) Conflicting provisions.~~ In the case of any conflict between the accessory dwelling unit standards of this section and any other requirement of this chapter or the subdivision ordinance, the standards of this section shall control.

(b) *Accessory food preparation area.* Accessory food preparation areas include secondary kitchens and wet bars.

(1) *Secondary kitchens.* Secondary kitchens, as defined in Article XVIII, are permitted ~~by special exception in residential dwellings in the zoning districts specified in Table 78-80.2(c), and in accordance with all of the following provisions~~

~~a. A secondary kitchen shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.~~

~~ba. The location of the secondary kitchen is located on the same floor as the primary kitchen and the secondary kitchen is not separated from the remainder of the dwelling unit by door(s) equipped with any of the~~

**November 16, 2021
(public hearing)**

following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition. *A second kitchen within an accessory dwelling unit is regulated under Section 78-80.4(a).*

~~e. A unique and compelling need is demonstrated by the applicant.~~

~~db.~~ A zoning inspection permit is applied for and approved.

~~e. The proposed activity meets the standards of section 78-155.3(e), review standards for special exceptions.~~

~~f. Secondary kitchens shall not be permitted in accessory structures except under the provisions of section 78-80.4, accessory dwelling unit.~~

(2) *Wet bars.* Wet bars, as defined in Article XVIII, are permitted by-right in accordance with all of the following provisions:

- a. A wet bar shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.
- b. The location of the wet bar, when in the same structure as the primary kitchen, shall not be separated from the remainder of the dwelling unit by door(s) equipped with any of the following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition.
- c. A wet bar shall not contain any oven exceeding 2.2 cubic feet, a stove, range, stovetop, grill, 240-volt electrical outlet(s) or any gas lines, a sink having a waste line drain in excess of one and one-half inches in diameter, a rough in for any of the above items, portable burner(s) and/or portable cooktops.
- d. Wet bars located outside of any building and associated with patio areas may have grills, cooktops and gas lines, but shall not be enclosed on more than two sides.
- e. *No more than one wet bar is permitted per dwelling unit.*

November 16, 2021
(public hearing)

GENERAL

9. **Resolution 21-G-85, to approve the Town's participation in the proposed settlement of opioid-related claims against McKesson, Cardinal Health, AmerisourceBergen, Janssen, and their related corporate entities, and to direct the Town Manager and/or Town Attorney to execute the documents necessary to effectuate the Town's participation in the settlements.**

Having previously entered his disclosure into the record, Vice Mayor del Aguila left the dais and the meeting at 9:30 p.m.

Mayor Olem recognized Lesa Yeatts, Town Attorney. She presented the staff report dated November 9, 2021 which is on file in the Town Clerk's office. As she had previously indicated, Ms. Yeatts thought everyone was aware of the opioid crisis. After years of negotiations and claims, a proposed nationwide settlement had been reached that would resolve litigation brought against the three largest pharmaceutical distributors, McKesson, Cardinal Health, AmerisourceBergen, and one manufacturer, Janssen Pharmaceuticals, Inc., and its parent company Johnson & Johnson. The national settlement was \$26 billion, and Virginia would stand to receive \$535 million. The state elected to participate in both of the national settlements and cities, counties, and towns (with population greater than 10,000) may participate if they did so by January 2, 2022.

The proposed resolution would approve the town's participation in the settlement of the opioid claims against the named pharmaceutical companies and their related entities and would direct the Town Manager and/or Town Attorney to effectuate the necessary documents for the town's participation in the settlement.

Ms. Yeatts stated that it was important that every locality that could participate did. The extent of participation would determine how much of the possible \$535 million would go to the state. At the work session there was a question about how the money was distributed. Ms. Yeatts stated that although the specifics were unclear, approximately 70 percent would be distributed to the "opioid abatement authority" in Virginia, which would be used to fund opioid remediation.

Staff recommended that Council approve the resolution as proposed.

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

Councilmember Friedrichs stated it was her understanding that the Commonwealth needed the town to vote on this item so the state could receive the funds to remediate opioids, and she asked Ms. Yeatts if this was correct.

**November 16, 2021
(public hearing)**

Ms. Yeatts agreed that this item would allow the town to participate in the settlement. The number of subdivisions in the state participating would increase how much money the state would receive. There was a possibility that the town would receive funds, but those would be very limited.

Mayor Olem stated this had been going on for some time, and she knew Attorney General Mark Herring had diligently worked on this. She hoped this would bring relief to many families in the state.

Councilmember Friedrichs moved to approve Resolution 21-G-85, approving the town's participation in the proposed settlement of opioid-related claims, and directing the Town Manager and/or Town Attorney to execute the documents necessary to effectuate the Town's participation in the settlements.

Motion seconded by Councilmember Singh.

Councilmember Singh stated that the companies involved in the settlement did not even admit they were at fault. He thought their admission was far more important than any amount of money.

The question was called on the motion, which carried by a 6-0 roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, and Mayor Olem voting "Aye." Vice Mayor del Aguila was absent, having left the meeting.

Resolution 21-G-85, to approve the Town's participation in the proposed settlement of opioid-related claims against McKesson, Cardinal Health, AmerisourceBergen, Janssen, and their related corporate entities, and to direct the Town Manager and/or Town Attorney to execute the documents necessary to effectuate the Town's participation in the settlements.

WHEREAS, the opioid epidemic that has cost thousands of human lives across the country also impacts the Commonwealth of Virginia and its towns, cities and counties by adversely impacting, amongst other things, the delivery of emergency medical, law enforcement, criminal justice, mental health and substance abuse services, and other services; and

WHEREAS, the Commonwealth of Virginia and its towns, cities and counties have been required and will continue to be required to allocate substantial taxpayer dollars, resources, staff energy and time to address the damage the opioid epidemic has caused and continues to cause the citizens of Virginia; and

WHEREAS, settlement proposals have been negotiated that will cause McKesson, Cardinal Health, AmerisourceBergen, and Janssen to pay up to \$26 billion nationwide to resolve opioid-related claims against them.

**November 16, 2021
(public hearing)**

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, on this 16th day of November, hereby approves of the Town's participation in the proposed settlement of opioid-related claims against McKesson, Cardinal Health, AmerisourceBergen, Janssen, and their related corporate entities, and directs the Town Manager and/or Town Attorney to execute the documents necessary to effectuate the Town's participation in the settlements, including the required release of claims against settling entities.

CONSENT

10. **Resolution 21-G-86, to adopt the Investment and Portfolio Policy for the Town of Herndon and to establish an Investment Oversight Committee.**
11. **Resolution 21-G-87, to endorse and approve the submission of a funding application to the Northern Virginia Transportation Authority (NVTA) for FY26-FY27 Regional Funding to be directed towards the project titled 'Herndon Parkway Improvements at Worldgate Drive Extension'.**
12. **Resolution 21-G-88, to ratify a Second Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and the Board of Supervisors of Fairfax County, Virginia.**
13. **Resolution 21-G-89, to ratify an Amendment of License Agreement pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce to delete provisions relating to portable toilets and to extend the termination date of an ice machine on Town property.**

On motion of Councilmember Regan, seconded by Councilmember Dhakal, the Consent Agenda items were approved by 6-0 roll call vote, without comment. The vote was: Councilmembers Alam Dhakal, Friedrichs, Regan, Singh, and Mayor Olem voting "Aye." Vice Mayor del Aguila was absent, having left the meeting.

Resolution 21-G-86, to adopt the Investment and Portfolio Policy for the Town of Herndon and to establish an Investment Oversight Committee.

THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby:

1. Adopts the Investment and Portfolio Policy of the Town of Herndon, Virginia dated November 16, 2021, as the official investment policy of the Town and charges the Town Manager and Director of Finance with its implementation and with the establishment of the Investment Oversight Committee.

**November 16, 2021
(public hearing)**

2. The Town Council Appoints one member of the governing body to sit on the Investment Oversight Committee. This appointment will be Councilmember Jasbinder Singh.
3. This resolution shall be effective on and after the date of its adoption.

[Note: Attached for reference is the 'Investment and Portfolio Policy of the Town of Herndon, Virginia dated November 9, 2021.']

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

1.0 POLICY

This policy for the Town of Herndon, Virginia (The Town) shall establish guidelines to invest public funds which will safely preserve principal, provide adequate liquidity for cash flow needs, and optimize returns on investment while adhering to all applicable federal, Virginia State Laws, and Local Statutes governing the investments of public funds.

SCOPE

This investment policy applies to all investment activity of public funds for the Town. These funds are accounted for in the Town of Herndon's Annual Comprehensive Financial Report and include: the General Fund, the Water and Sewer Fund, the Chestnut Grove Cemetery Fund, the Golf Course Fund, the Downtown Parking Enterprise Fund, the Capital Projects Fund, and the American Rescue Recovery Act Fund, and other funds that may be created from time to time, with the exclusion of the Supplemental Retirement Plan for Police Employees, shall be administered in accordance with the provisions of these policies.

OBJECTIVES

The overall objectives of this policy for the Town are: Safety of principal is the foremost objective of the Town. Each investment transaction shall seek to first ensure that capital losses are avoided, whether they are from securities default or erosion of market value. Liquidity is the second objective of the Town to ensure adequate coverage of expenditures or obligations when due to protect against losses that might occur in the event of sales or liquidations of investments prior to maturity.

The Town's cash management portfolio shall be designed with the third objective of regularly exceeding the average return on three-month U.S. Treasury bills, or the average rate on Federal funds, whichever is higher. These indices are considered benchmarks for riskless investment transactions and therefore comprise a minimum standard for the portfolio's rate of return. The investment program shall seek to augment returns above this threshold, consistent with risk limitations identified here and prudent investment principles.

The Town's outside investment managers are encouraged to represent the Town's best interests in seeking to remove constraints to the efficient investment of its funds.

All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment officials shall avoid any transaction that might impair public confidence in the Town's ability to govern effectively.

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

INVESTMENT OVERSIGHT COMMITTEE

There shall be an investment oversight committee composed of one member of Town Council, the Town Manager, a member of the Town Attorney's office, the Director of Finance for the Town, and one member of the public. The Town Council will appoint the Council Member at a public meeting. The Town Manager will appoint the member from the Town Attorney's Office, the Director of Finance and the member of the public. Members of the committee shall meet periodically as set forth by the committee to review general investment strategies, monitor results; discuss internal controls, and economic updates. The committee shall establish its own rules and procedures.

DELEGATION OF AUTHORITY

The Town Manager delegates management responsibility for the investment program to the Director of Finance (Director) who, after consultation with the Town Manager and subsequent approval by the Town Council, shall establish written procedures for the operation of the investment program, consistent with this investment policy. These procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction for the Town except as provided under the terms of this policy and the procedures established by the Director. The Director shall be responsible for the transactions undertaken and shall establish a system of internal controls to regulate the activities of subordinate officials.

STANDARD OF PRUDENCE

Public Funds held by the Commonwealth, public officers, municipal corporations, political subdivisions, and any other public body of the commonwealth shall be held in trust for the citizens of the Commonwealth. Any investments of such funds pursuant to the provision of the code of Virginia § 2.2-4514, shall be made solely in the interest of the citizens of the Commonwealth and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. The Town shall relieve investment officers acting in accordance with law and written procedures and exercising due diligence of personal responsibility for credit risk or market price changes, provided deviations from expectations are reported to the Town Manager within two weeks of discovering such deviations and appropriate action is taken to control adverse developments.

ETHICS AND CONFLICTS OF INTEREST

Officers and employees involved in the investment process shall refrain from any personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Consistent with the State and Local Government Conflict of Interest Act (Sec. 2.2-3100 thru 2.2-3127 Code of Virginia), employees and investment officials shall disclose or

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

otherwise take appropriate action with respect to any personal interest in any financial institution transaction or contract related to Town investments. Further, such employees and investment officials shall file a Statement of Economic Interest with the Town Clerk by January 15 of each calendar year, as described in Sec. 2.2-3115 Code of Virginia. Employees and officers shall subordinate their personal investment transactions to those of the Town, particularly regarding the timing of purchases and sales.

SAFEKEEPING CUSTODY AND INTERNAL CONTROL

To protect against potential fraud and embezzlement, the assets of the Town shall be secured through third-party custody and safekeeping procedures. Bearer instruments shall be held only through third-party institutions. Investment officials shall be bonded to protect the public against possible embezzlement, malfeasance, nonfeasance, or negligence. Collateralized securities, such as repurchase agreements, shall be delivered to the Town or third-party agent. Unless prevailing practices or economic circumstances dictate otherwise, ownership shall be protected through third-party custodial safekeeping. The Finance Director shall establish a system of internal controls, which shall be documented in writing. The internal control structure shall be designed to minimize or prevent loss of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the Town.

REPORTING: INTERIM AND ANNUAL

The Finance Director shall submit to the Town Manager and the Investment Committee a quarterly investment report that summarizes the status of the current investment portfolio and transactions made over the last quarter. The report will include but not limited to investment holdings, issuer's list, monthly portfolio averages, interest earnings, rate of return, and cash flows. The report will explain the year-to-date total investment return and compare the return with budgetary expectations. The report will include an appendix that discloses all transactions during the reporting period. If warranted, the report will indicate any areas of policy concern and suggested or planned revision of investment strategies. Within 180 days after the end of the fiscal year, the Finance Director shall present to the Town Manager and the Investment Committee an annual report on the investment program and investment activity. The report shall be based on the audited numbers of the most recently concluded fiscal year. The annual report will include 12-month comparisons on return and, if warranted, suggest policies and improvements that could be made in the investment program. Information contained in the report will be sufficiently detailed to permit an independent evaluation of the performance of the investment program.

SUITABLE AND AUTHORIZED INVESTMENTS

As a unit of local government in the Commonwealth of Virginia, the Town is governed by the Virginia Security for Public Deposits Act, 2.2-4400 through 2.2-4411 and the Investment of Public Funds as described in Sec. 2.2-4500 through 2.2-4517 of the Code of Virginia. The following securities may be purchased for the Town's investment portfolio:

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

Investment Instrument	VA Code	Minimum Rating or qualifications
U.S. Treasury Obligations	2.2-4501 (A1, A2)	
Negotiable Certificate of Deposits	2.2-4509	Moody's P-1 and S&P A-1 if less than a year; AA rating if greater than a year
Non-Negotiable Certificates of Deposit	2.2-4401	Must meet Virginia Security for Public Deposits Act
Certificate of Deposit Account Registry Service (CDARS)	2.2-4518	Must meet Virginia Security for Public Deposits Act and collateralization requirements
Bank Demand Deposits	2.2-4518	Must meet Virginia Security for Public Deposits Act
Insured Cash Sweeps (ICS)	2.24518	Must meet Virginia Security for Public Deposits Act
Repurchase Agreements	2.24507	Collateral Obligations of the U.S. and Master Repurchase Agreement
US Government Agency Securities and Government Sponsored Corporations	2.2-4501 (A2)	Must have at least 2 of the following: Moody's P1, S&P A-1, or Fitch F-1
High Quality Corporate Notes	2.2-4510	Must have at least 2 of the following: Moody's Aa, S&P AA, or Fitch AA
Municipal Obligations	2.2-4510	
Prime Quality Commercial Paper	2.2-4502	Must be Moody's P1 and S&P A-1
VML/VaCO Virginia Investment Pool	2.2-4513.1	Investments in Pool must adhere to Virginia Investment of Public Funds codes
Local Government Investment Pool (LGIP)	2.2-4513.1	Investments in Pool must adhere to Virginia Investment of Public Funds codes
Bankers Acceptances	2.2-4504	Must be Moody's P1 and S&P A-1
State Non-Arbitrage Pool (SNAP)	2.2-4700	SNAP Program
Mutual Funds	2.2-4508	One of: S&P AAA, Fitch AAA, or Moody's Aaa

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

All investments will be in the name of the Town and will name the specific fund from which the instrument was purchased. Safekeeping account receipts will be held by the Finance Department or designated custodial agent.

AUTHORIZED FINANCIAL INSTITUTIONS, DEPOSITORIES, AND BROKER/DEALERS:

The Director of Finance or person(s) responsible will maintain a list of financial institutions authorized to provide investment services. In addition, a list will be maintained for approved or security brokers/dealers selected by credit worthiness that are authorized to provide investment services in the State of Virginia. These may include "primary" dealers or regional dealers that qualify under the Securities & Exchange Commission Rule 15C3-1. No public deposit shall be made except in a qualified public Depository as established by Virginia laws. Broker and Dealers would need to be qualified by the Town of Herndon through a certification process. This process will be written and determined by the Director of Finance to include but not limited to requesting:

- Audited financial statements,
- National Association of Security Dealers Certification
- Trading Resolution
- Proof of Insurance
- Virginia State registration
- Completed broker/dealer questionnaire
- Proof of insurance, and in business for a minimum of 5 years,
- Certification of having read Town of Herndon's Investment Policy

Financial Institutions will need to meet the qualifications of the Virginia Security for Public Deposits Act and be a "Qualified Public Depository."

Employees of any firm or financial Institution offering securities or investments to the Town shall be trained in the precautions appropriate to public-sector investments and shall be required to familiarize themselves with the Town's investment objectives, policies, and constraints.

An Annual review of the financial condition and registrations of qualified bidders will be conducted by the Director of Finance or person(s) authorized.

INVESTMENT DIVERSIFICATION

The Town will diversify use of investment instruments to minimize risks due to a concentration in specific instruments, individual financial institutions, or maturities. Percentages will be determined based on cost basis at the time of purchase of portfolio holdings.

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

Investment Instrument	Maximum Allowable Allocation (%) (at the time of purchase)
U.S. Treasury Obligations	100 %
Negotiable Certificates of Deposit	25%
Non-Negotiable Certificates of Deposit	75
Certificate of Deposit Account Registry Services (CDARS)	75%
Bank Demand Deposits	50%
Insured Cash Sweeps (ICS)	75%
Repurchase Agreements	30 %
US Government Agency Securities and Government Sponsored Corporations	80%
High Quality Corporate Notes	50 %
Municipal Obligations	50 %
Prime Quality Commercial Paper	35 %
VML/VaCO Virginia Investment Pool	50 %
Local Government Investment Pool (LGIP)	100 %
Bankers Acceptances	10 %
State Non-Arbitrage Pool (SNAP)	100 % of Bond Proceeds Only
Mutual Funds	15%

Diversification by Financial Institution:

Banker's Acceptances (BAs)	Not more than 25% of the Town's total portfolio may be invested with any one institution
Repurchase Agreements (Repos)	Not more than 25% of the Town's total portfolio may be invested with any one institution
Certificates of Deposit (CDs) – Commercial Banks/Savings and Loan Associations	Not more than 50% of the Town's total portfolio may be invested with any one institution
Commercial Paper	Not more than 5% of the Town's total portfolio may be invested with any one issuer
Local Government Investment Pool	No restrictions
Open-end Investment Fund	No restrictions

No other types of investments are permitted.

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

MATURITIES AND VOLATILITY

To the extent possible, the Town of Herndon will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the Town of Herndon will not directly invest in securities maturing more than 5 years from the date of purchase. Reserve funds may be invested in securities exceeding 5 years if the maturity of such investments is made to coincide as nearly as practical with the expected use of the funds.

Maximum Maturity	Allowable Allocation (%)
12 months or less	100% of Portfolio
Great than 12 months to 24 months	15% of Portfolio
Greater than 24 months to 60 months	10 % prior fiscal year average balance

LIQUIDITY

A portion of the portfolio shall be invested in instruments that can be liquidated with one day's notice to meet the Town's operating needs.

RISKS

No individual investment shall be undertaken that jeopardizes the capital position of the portfolio. All investments shall either bear the full faith and credit of the United States government or be fully collateralized or insured, as defined by the Virginia Security for Public Deposits Act, Sec.2.2-4400 through 2.2-4411 of the Code of Virginia or otherwise comply with the standards as described in this policy and Sec. 2.2-4500 through 2.2-4517 of the Code of Virginia.

This policy seeks to provide a more detail investment policy. In the absence of any issue or situation not specifically addressed by this policy; any action undertaken by the Director of Finance or their staff, will always be in compliance with the Code of Virginia.

Revision date: November 16, 2021

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

Glossary

AGENCIES: Securities issued by agencies of the U.S. Government and/or U.S. Government-sponsored enterprises.

ANNUAL COMPREHENSIVE FINANCIAL REPORT (ACFR) The official annual report for the local government in Virginia. It includes five combined statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting Schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section.

ASKED: The price at which securities are offered by the seller. Also called offer or offered price.

BANKERS' ACCEPTANCE (BA): A short term instrument that is an unconditional obligation of the accepting bank. A BA is a bank obligation that has at least the same credit strength as any CD issued by the same bank. BA's do not carry FDIC insurance. The accepting institution guarantees payment of the note, as well as the issuer.

BENCHMARK: A comparative base for measuring the performance or risk tolerance of the investment portfolio. A benchmark should represent a close correlation to the level of risk and the average duration of the portfolio's investments.

BID: The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.) See Offer.

BROKER: A broker brings buyers and sellers together for a commission.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable and can be sold in a secondary market. Negotiable CD's are typically DTC eligible.

COLLATERAL: Securities, evidence of deposit, or other property that a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COMMERCIAL PAPER: An unsecured promissory note with a fixed maturity of no more than 270 days. Commercial paper is typically sold at a discount from its face value but can be issued as interest bearing as well.

COUPON: (a) The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. (b) A certificate attached to a bond evidencing interest due on a payment date.

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

DEALER: A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

DELIVERY VERSUS PAYMENT: (DVP) There are two methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

DERIVATIVES: (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

DIRECT ISSUE: Companies that issue their securities directly to the market- instead of through a broker/dealer. Typically, large corporations, i.e.: Commercial paper issuers.

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

DISCOUNT SECURITIES: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g., U.S. Treasury Bills.

DIVERSIFICATION: Dividing investment securities among a variety of securities types, Commercial paper, Bankers' acceptance or discounted governmental agencies, each providing an independent return.

DTC: Depository Trust Company

FEDERAL CREDIT AGENCIES: Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, e.g., S&L's, small-business firms, students, farmers, farm cooperatives, and exporters.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to \$100,000 per deposit.

FEDERAL FUNDS RATE: The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB): Government sponsored wholesale banks (currently 12 regional banks) that lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLBs is to liquefy the housing related assets of its members who must purchase stock in their district Bank.

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA): FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL OPEN MARKET COMMITTEE (FOMC): Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,700 commercial banks that are members of the system.

GOVERNMENT NATIONAL MORTGAGEASSOCIATION (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA, or FmHA mortgages. The term "passthroughs" is often used to describe Ginnie Maes.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP): The aggregate of all funds from political subdivisions that are placed in the custody of the State Treasurer for investment and reinvestment.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MASTER REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase—reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

MONEY MARKET: The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See Asked and Bid.

OPEN MARKET OPERATIONS: Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PORTFOLIO: Collection of securities held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

PRUDENT PERSON RULE: An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state—the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

QUALIFIED PUBLIC DEPOSITORIES: A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond the current income return.

REPURCHASE AGREEMENT (RP OR REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money, that is, increasing bank reserves.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES & EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

**November 16, 2021
(public hearing)**

**TOWN OF HERNDON, VIRGINIA
INVESTMENT AND PORTFOLIO POLICY**

November 16, 2021

SEC RULE 15C3-1: See Uniform Net Capital Rule.

STRUCTURED NOTES: Notes issued by Government Sponsored Enterprises (FHLB, FNMA, SLMA, etc.) and Corporations that have imbedded options (e.g., call features, step-up coupons, floating rate coupons, derivative-based returns) into their debt structure. Their market performance is impacted by the fluctuation of interest rates, the volatility of the imbedded options and shifts in the shape of the yield curve.

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

TREASURY BONDS: Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years.

TREASURY NOTES: Medium-term coupon bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years.

UNIFORM NET CAPITAL RULE: Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

YIELD: The rate of annual income return on an investment, expressed as a percentage.

INCOME YIELD is obtained by dividing the current dollar income by the current market price for the security.

NET YIELD or YIELD TO MATURITY is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

**November 16, 2021
(public hearing)**

Resolution 21-G-87, to endorse and approve the submission of a funding application to the Northern Virginia Transportation Authority (NVTA) for FY26-FY27 Regional Funding to be directed towards the project titled *'Herndon Parkway Improvements at Worldgate Drive Extension.'*

WHEREAS, the NVTA has requested that its member jurisdictions identify candidate projects for Regional share funding under their FY2022-FY2027 Six Year Program; and

WHEREAS, the town's candidate project for NVTA Regional funding is included in NVTA's adopted regional TransAction Plan (identified under Herndon Metrorail Multimodal Improvements, Project 12e) and is therefore eligible for the Regional share portion of HB-2313 state transportation revenues; and

WHEREAS, this project is also included in the Virginia's Department of Transportation Six-Year Improvement Program and the Metropolitan Washington Council of Governments, Transportation Planning Board's Constrained Long-Range Plan; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008 and as amended through November 17, 2020, advises roadway capacity and multimodal improvements at the intersection of Herndon Parkway and future Worldgate Drive Extension; and

WHEREAS, on March 11, 2014, the Town Council had adopted a resolution (14-G-22) that had authorized the Mayor to sign a Memorandum of Agreement for the distribution of NVTA's Local share funding revenues to the town for Public Works staff and the town's transportation consultant to begin right-of-way survey, concept and engineering design for the Worldgate Drive Extension project; and

WHEREAS, on December 13, 2016, the Town Council had adopted a resolution (16-G-75) that had selected Option 5 as the preferred engineering design for this project, based on review of the traffic data analysis, safety considerations, private property owner feedback and land acquisition requirements; and

WHEREAS, the adopted Option 5 and its roadway design for Worldgate Drive Extension had also included the engineering design for the intersection with Herndon Parkway and its adjoining bus bay drop-off/pick-up facility to access the northside of the Herndon Metrorail Station; and

**November 16, 2021
(public hearing)**

WHEREAS, the total project cost to construct the '*Herndon Parkway Improvements at Worldgate Drive Extension*' project is estimated at \$6,536,000 million; and

WHEREAS, the Town of Herndon has previously utilized approved NVTa Local share revenue of \$150,000 to complete the initial engineering design phase and since 2017 the town has accumulated \$1,805,000 million of NVTa approved Congestion Mitigation and Air Quality (CMAQ) funding for this project; and

WHEREAS, this year's NVTa funding application, under NVTa's FY2022-FY2027 Six-Year Program, is to seek Regional share funding totaling \$4,581,000 million to be directed towards the remaining project balance.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby endorses and approves the submission of one funding application with a funding request of \$4,581,000 to NVTa for FY26-FY27 Regional Funding to be directed towards the project titled '*Herndon Parkway Improvements at Worldgate Drive Extension*.'

Resolution 21-G-88, to ratify a Second Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and the Board of Supervisors of Fairfax County, Virginia.

WHEREAS, the parties entered into a Lease Agreement dated November 12, 2019, as extended by the Extension of Lease dated September 18, 2020 for 185.4 sq. ft of office space in the Town's building at 397 Herndon Parkway; and

WHEREAS, the Lease Agreement was set to expire on November 11, 2021; and

WHEREAS, Town and Lessee desired to extend the term of the Agreement for 1 year to expire on November 11, 2022; and

WHEREAS, The Second Extension of Lease Agreement was signed by the Town Manager and ratified by Town Council.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Second Extension of Lease dated October 8, 2021 and signed by the Town Manager between the Town of Herndon and the Board of Supervisors of Fairfax County, Virginia for space in the Town's building at 397 Herndon Parkway in Herndon.

**November 16, 2021
(public hearing)**

[Note: Attached for reference is the 'Second Extension of Lease dated October 8, 2021 and signed by the Town Manager b/n the Town and the Fairfax County Board of Supervisors for space in the Town's building at 397 Herndon Parkway.']

**Second Extension of Lease Agreement Pursuant to Ordinance 20-O-23
Continuity of Governmental Operations due to State of Emergency,
Pandemic Disaster Covid-19**

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-O-23, as amended, this Second Extension of Lease Agreement dated October 8, 2021 hereby extends the November 11, 2021 termination date of the existing Lease Agreement between the TOWN OF HERNDON, a municipal corporation (Landlord) and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (Tenant), dated November 12, 2019, as extended by the Extension of Lease dated September 18, 2020 (the Lease) for 185.4 square feet of space at 397 Herndon Parkway (the Premises), as set out in this Second Extension of Lease (the Extension). THEREFORE, for the consideration stated in the Lease, the parties agree as follows:

1. The Lease is incorporated by reference.
2. The Lease shall terminate on November 11, 2022.
3. In all other respects, the Lease is confirmed.

TOWN OF HERNDON, VIRGINIA

**BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA**

By: 

Name: William H. Ashton II

Title: Town Manager

By:  10/25/2021

Name: Christina C. Jackson

Title: Chief Financial Officer

APPROVED AS TO FORM

By: 

Name: Lisa J. Yeatts

Title: Town Attorney

**November 16, 2021
(public hearing)**

Resolution 21-G-89, to ratify an Amendment of License Agreement pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce to delete provisions relating to portable toilets and to extend the termination date of an ice machine on Town property.

WHEREAS, the parties entered into a License Agreement dated July 8, 2021, for the placement of portable toilets and an ice machine on Town property; and

WHEREAS, the License Agreement would have expired on October 4, 2021; and

WHEREAS, Town and Licensor desired to delete provisions relating to portable toilets and to extend the termination date of an ice machine on Town property so that it will expire on May 1, 2022; and

WHEREAS, the Extension of License was signed by the Town Manager pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Amendment of License dated October 29, 2021 and signed by the Town Manager between the Town of Herndon and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce to delete provisions relating to portable toilets and to extend the termination date of an ice machine on Town property.

[Note: Attached for reference is the ‘Amendment of License dated October 29, 2021 and signed by the Town Manager between the Town of Herndon and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce to delete provisions relating to portable toilets and to extend the termination date of an ice machine on Town property.’]

**November 16, 2021
(public hearing)**

**Amendment of License Pursuant to Ordinance 20-O-23 Continuity of
Governmental Operations due to State of Emergency,
Pandemic Disaster Covid-19**

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-O-23, as amended, this Amendment of License dated October 29, 2021, hereby amends the license between the TOWN OF HERNDON, VIRGINIA, a municipal corporation ("Town") and the DULLES REGIONAL CHAMBER OF COMMERCE d/b/a Herndon Chamber of Commerce, a Virginia corporation ("Chamber") dated July 8, 2021 ("the License") to delete provisions relating to portable toilets and to extend the termination date relative to the ice machine from October 4, 2021 to May 1, 2022 ("the Amendment")

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

1. The License is incorporated by reference.
2. The License shall terminate on **May 1, 2022**.
3. In all other respects, the License is confirmed.

**DULLES REGIONAL CHAMBER OF COMMERCE
d/b/a HERNDON CHAMBER OF COMMERCE**

By _____

Name/Title: _____

Joe Martin
Joe Martin, President

TOWN OF HERNDON, VIRGINIA

William H. Ashton II

William H. Ashton II, Town Manager

APPROVED AS TO FORM:

Lesa J. Yeatts

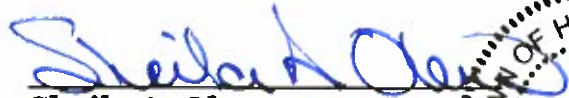
Lesa J. Yeatts, Town Attorney

Attachment
21-G-89

**November 16, 2021
(public hearing)**

ADJOURNMENT

Councilmember Friedrichs moved to adjourn the meeting of the November 16, 2021 public hearing at 9:37 p.m. and Councilmember Dhakal seconded the motion. The question was called on the motion which carried by 6-0 roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, and Mayor Olem voting "Aye." Vice Mayor del Aguila was absent, having left the meeting.


**Sheila A. Olem
Mayor**




**Jessica Sizemore
Legislative Assistant**

Minutes approved by Town Council: March 22, 2022.

November 16, 2021
(public hearing)

NOTE:

This page was intentionally left blank