



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
January 25, 2022

The Town Council met in public session on Tuesday, January 11, 2022, 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 Pradip Dhakal, Signe Friedrichs; Sean M. Regan; and Jasbinder Singh. Councilmember Naila Alam was absent. Councilmember Friedrichs left the meeting at 9:00 p.m.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Viki Wellershaus, Town Clerk; Chief Maggie DeBoard, Herndon Police Department; Anne Curtis, Chief Communications Officer; Lisa Gilleran, Director of Community Development; Page Kalapasev, Director of Information Technology; Scott Robinson, Director of Public Works; Captain Steven Pihonak, Herndon Police Department; John Irish, Deputy Director of Public Works; Dennis Holste, Economic Development Manager; David Stromberg, Zoning Administrator; Richard Smith; Senior Civil Engineer; Ahmad Zaki, Lead Planner; Howard Scott, Parking Enforcement Official; Collin Okoniewski, Planning Operations Manager; Lindsey Jones, Systems Technician; and Margie Tacci, Deputy Town Clerk.

PLEDGE & CALL TO ORDER

Mayor Olem called the meeting to order at 7:00 p.m., all members present, except Councilmember Alam who was absent, and with Mayor Olem presiding.

ANNOUNCEMENTS

Mayor Olem asked that everyone in attendance wear their masks unless they were speaking. She asked Council and those participating to observe meeting decorum by showing their hand to be recognized by the chair for comments. She reminded those

**January 25, 2022
(public hearing)**

participating to follow the town's Meeting Guidelines that were used for all government meetings to maintain good order, which included: refraining from participation unless and until recognized by the chair; being respectful in comments; refraining from threatening or intimidating language; profane, vulgar, obscene, or threatening remarks were not permitted; and attacks on the character, motive, or other harmful remarks against individual members of Council, town staff, or the public would not be tolerate.

APPROVAL OF MINUTES

**Vote on September 21, 2021
Town Council Work Session Minutes**

On motion of Councilmember Friedrichs, seconded by Councilmember Regan, and carried by a 6-0 roll call vote, the minutes of the September 21, 2021, Town Council Work Session were approved. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam was absent.

ANNOUNCEMENTS

Mayor Olem stated that she and Dennis Holste, Economic Development Manager, visited Hawkeye 360's new expanded space in Herndon. They enjoyed a tour of the facility with the Chief Operations Officer and several Vice Presidents. She encouraged parents with high school or college students that were into technology to contact her, because the business was going to be looking for interns.

Mayor Olem was excited to announce that the 36th Annual Mayor's Volunteer Reception is in the works and planned for Sunday, May 1. The applications to nominate individuals and businesses for Outstanding Volunteers, Distinguished Service, and Distinguished Corporate Service Awards were available on the town's website, along with details for each award. Nominations were due March 14.

Mayor Olem stated that the town received many comments from citizens regarding Town Code Section 30-246 and its application to "massage therapists." She said that it was understandable that the language of this section that was adopted decades ago seemed strange and archaic; however, it was consistent with the current language in the Code of Virginia Section 58.1-3706(A), permitting tax rates for certain businesses above the limits contained in that section. She stated that the Council could not direct staff to ignore the enacted code section. As fiduciary officers of the town, the Finance Director and his designees must abide by the enacted laws of the town until amended or appealed through the legally required process. Such an amendment would require advertising, a public hearing and would be effective beginning with the next fiscal year (2023).

Mayor Olem believed there was enough support to bring forward an amendment at the appropriate time. In the meantime, she recommended that any business that was concerned about this to file an appeal pursuant to Town Code Section 30-217. This

**January 25, 2022
(public hearing)**

would stop the clock on the tax collection and would give staff the opportunity to reevaluate the applicability of the tax based on the facts of their individual situation. She encouraged those interested to submit an appeal through a signed letter to the Finance Director, specifically stating what was being contested for Fiscal Year 2022. Once this appeal letter was received, the Finance Director was legally authorized to suspend payment during the review process until a final determination was made and communicated to the taxpayer in writing. She offered to email a copy of this to anyone interested if her statements were not clear.

3. COMMENTS FROM THE TOWN MANAGER

Mayor Olem asked if Mr. Ashton had comments this evening, and Mr. Ashton stated that he did not have comments to share.

4. COMMENTS FROM THE TOWN COUNCIL

Councilmember Dhakal: Apologized for missing a few meetings because he had a new baby in his house. He thanked those in the audience for coming and understood many were here to comment on the business license fee. He told them that he was with them, and they would work through this issue to make sure that the fee is consistent with other business categories. However, Councilmember Dhakal stated any changes would not take effect until next fiscal year. He asked what could be done this year and asked for a work session discussion item to further discuss the BPOL fees.

Councilmember Dhakal stated he also knew many people were in the audience to discuss parking. He indicated it was an important issue and he looked forward to the discussion.

Councilmember Friedrichs: Thanked Meg Donnelly, who was a massage therapist in Herndon, for rallying the crowd and all those who were here to speak that evening.

Councilmember Regan: No comments.

Councilmember Singh: Stated he understood and supported the massage therapists that were there that evening. He stated he would do what was possible to help them.

Vice Mayor del Aguila: Echoed his colleagues' comments about those that were there that evening to speak about the business license charges. As a full disclosure, he stated he had also met with Meg Donnelly about the issue and that they are neighbors. He stated the recording of that meeting was available, he would submit it to the Town Clerk, and he looked forward to finding a solution.

Mayor Olem: Had attended several ribbon cuttings for several of the massage therapists that were in attendance. She was glad to see them there that evening and that they would work to find a solution.

**January 25, 2022
(public hearing)**

Councilmember Dhakal asked if he could make another comment, and Mayor Olem asked him to go ahead.

Councilmember Dhakal echoed his colleagues and thanked Meg Donnelly for bringing the massage therapist issue to their attention. He stated like Vice Mayor del Aguila, he was also neighbors with Meg Donnelly. He thought addressing this issue was the right thing to do.

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Olem asked Margie Tacci, Deputy Town Clerk, whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and she stated comments were provided to Council and entered into the record on item #5, Comments from the Audience, regarding business license fees for massage therapists; and item #6, proposed Ordinance 22-O-03 to amend and reenact Chapter 42, with regard to parking on town streets and towing. The Clerk did not receive disclosures from Council on any item listed on the agenda this evening.

5. COMMENTS FROM THE AUDIENCE

Mayor Olem reminded everyone in the audience that they could comment on any items that were not public hearings at this time. Mayor Olem reviewed the process for speaking and stated that this would be the appropriate time to comment on the General or Consent agenda items.

The following members of the audience provided comments about business license fees for massage therapists, asking the town to bring the license fees back to the rates that other business pay:

- Megan Donnelly, 114 Fortnightly Boulevard, Herndon and business owner at 464 Herndon Parkway Suite #116, Herndon, who began reading a statement into the record.
- Casey White, business owner at 491 Carlisle Drive, Herndon, who finished reading Ms. Donnelly's written statement into the record.
 - Mayor Olem asked Ms. White if she wanted to request that her and Ms. Donnelly's associates or colleagues stand in support of their statement. Mayor Olem stated that she counted approximately 18 individuals that stood in support.
- Neta Chiarello, 464 Herndon Parkway, Suite #116, Herndon, who read into the record a letter of support from John Boylan Interim President, Dulles Regional Chamber of Commerce, which is on file in the Town Clerk's office.
- Tess Rollins, 2621 Bastion Lane, Herndon.

**January 25, 2022
(public hearing)**

- Jessica Drummond, 205 Keyes Court, Sterling.
- Kerri Bundy, 1652 Wainwright Drive, Reston; business address at 423 Carlisle Drive, Herndon.

The following members of the audience provided comments about other matters:

- Rory Spencer, 620 Worchester Street, Herndon; about road conditions, speeding, and large vehicle parking on Worchester Street.
- Charles Williams, 421 Queens Row Street, Herndon; echoed the previous speakers' comments about speeding on Worchester Street. He asked the town to revisit the traffic study there. He also provided comments supporting Ms. Donnelly's statements about license fees for massage therapists.
- Elsa Berhane, 915 Branch Drive, Herndon, regarding improvements to trash pick-up.

Ms. Tacci clarified there were several individuals that had signed up to speak during Comments from the Audience, who did not provide comments, but had stood in solidarity with Ms. Donnelly and Ms. White.

PUBLIC HEARINGS

6. Ordinance 22-O-03, to amend and reenact Chapter 42 (MOTOR VEHICLES AND TRAFFIC), Article I (Definitions), Article IV (Stopping, Standing, Parking), and Article V (Vehicles), with regard to parking on town streets and towing.

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, January 14, 2022, and January 21, 2022, issues.

Mayor Olem recognized Chief Maggie DeBoard, Herndon Police, who presented the staff report dated January 18, 2022, and a PowerPoint, which are on file in the Town Clerk's office. Howard 'Howie' Scott, the town's Parking Enforcement Official, was there to answer questions during the presentation.

Chief DeBoard outlined the timeline on the parking issues that have arisen and how the Herndon Police Department (HPD) was addressing them. She stated it became apparent that many provisions of the town parking code needed to be updated to address significant disparities between the ordinances of the town and the two adjoining counties. This resulted in a significant number of long-term parking, abandoned vehicles, and commercial vehicles being parked on town streets that would be illegally parked in the neighboring jurisdictions. She provided photographs in the PowerPoint of vehicles parked that would be illegally parked under the new proposal.

**January 25, 2022
(public hearing)**

Chief Deboard stated that both Fairfax and Loudoun counties have restrictions on the type of vehicles that can park in residential areas and on public streets, as well as identifying specific locations where vehicles are restricted from parking. In addition, the lack of town code language that effectively addresses abandoned and inoperable vehicles; oversized commercial vehicles in residential areas; motor homes, trailers, RVs; parking a sufficient distance from private driveways/mailboxes; and blocking curb ramps, have created unsafe conditions for both drivers and pedestrians.

The proposed amendments would address the parking issues identified by staff, as discussed with Council, and to address other necessary housekeeping amendments in Chapter 42. These included:

- 42.1(b) Amends and clarifies the definition of a commercial vehicle in line with Fairfax and Loudoun counties, and defines a utility trailer;
- 42-152(b) Prohibits parking in front of or within 10 feet of a driveway;
- 42-152(b) Prohibits parking to prevent the use of curb ramps;
- 42-160 Adds and prohibits the parking of recreational vehicles (including boats and large trailers) in residential zones to 72 hours; and
- Article V. Amendments addresses the definition of an abandoned or inoperable motor vehicle, adds procedures for removal, and payment of fines.

Chief DeBoard showed a chart comparing the differences between the town's parking ordinance and Fairfax and Loudoun counties. Staff recommends approval of the proposed ordinance, as presented.

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

There was a brief question and answer period between Councilmember Friedrichs and Chief DeBoard, who clarified several points about the proposed ordinance, including the distance from driveways and commercial vehicles for personal use.

Responding to the Councilmember Friedrichs' query about commercial vehicles, Lesa Yeatts, Town Attorney, stated that she thought Councilmember Friedrichs was referring to a discussion at the work session about large trucks, and if there was a difference in using them for personal reasons.

Chief DeBoard recalled the discussion at the work session about types of large trucks. She stated that in the proposed ordinance, any vehicle that met the definition for commercial vehicle could not park on the town's public street. She referenced a type of large truck that would just be over the length limit, and if that were being used for personal reasons, she did not think they would ticket that vehicle.

**January 25, 2022
(public hearing)**

Ms. Yeatts reviewed the definition of commercial vehicles pertaining to size and length.

There was a brief question and answer session and between Councilmember Singh and Chief DeBoard.

Councilmember Singh expressed concern over residents that own commercial vehicles only being able to park on the street for two hours and asked where they would park.

Chief DeBoard indicated that a lot of the commercial vehicles parking in town are not residents. She explained what HPD has seen in town with individuals leaving the commercial vehicles parked on town streets.

Councilmember Singh disagreed stating he thought that many of the commercial vehicles belonged to town residents. He asked the Council to think about that and said he did not care what Loudoun and Fairfax counties were doing.

In response to queries from Councilmember Singh, Chief DeBoard stated that most SUVs were not as large as the commercial vehicles defined in the proposed ordinance.

In response to queries from Councilmember Singh, Mr. Scott stated that most school buses parked during the day on the street for two hours or less. He stated that the town does not have an issue with school buses on the streets. The primary issue was safety with oversized vehicles and their height, and he provided some examples of what he had seen.

Councilmember Singh discussed parking on curved streets, where he thought the town needed to install signs. He stated he would not support some aspects of the proposed parking regulations.

Councilmember Dhakal stated that he had previously discussed changing the 10-foot distance to five feet. He asked if there was data about how many parking spaces would be lost, and Chief DeBoard replied that their recommendations were based on safety and that every area in town was different.

In response to queries from Councilmember Dhakal about commercial vehicles parked in driveways, Chief DeBoard stated that would constitute a zoning violation.

In response to queries from Councilmember Dhakal about commercial vehicles in driveways, Ms. Yeatts stated that the zoning code would not have the same definition of a commercial vehicle as the proposed ordinance.

Responding to the discussion, David Stromberg, Zoning Administrator, stated that the description of commercial vehicles in the code was similar to the one in the proposed ordinance. He said that would include box trucks and any three axel vehicles. The only type of commercial vehicle allowed would be a passenger vehicle used for commercial

**January 25, 2022
(public hearing)**

purposes, like pick-up trucks without ladder attachments. The Council would need to approve a zoning ordinance text amendment to change the current standards

Councilmember Dhakal asked about allowing commercial vehicles in driveways, but not on the streets, and Mr. Stromberg agreed that could be done by going through the zoning ordinance text amendment process.

In response to queries from Councilmember Dhakal, Mr. Scott discussed the number of commercial vehicles parked on town streets that were registered to other states and/or localities.

In response to Councilmember Dhakal's comments about the parking regulations in Fairfax and Loudoun counties, Chief DeBoard stated that businesses in those localities find places to park them.

There was a brief question and answer session between Vice Mayor del Aguila, Chief DeBoard, and Mr. Scott.

In response to queries from Vice Mayor del Aguila, Chief DeBoard stated that proposed regulations would have to apply town wide. The town could not select where to apply the code.

Vice Mayor del Aguila echoed an earlier comment that the regulations in Fairfax and Loudoun counties do not apply to Herndon.

Responding to queries about inoperable vehicles from Vice Mayor del Aguila, Mr. Scott stated that the number of inoperable vehicles varies, but he thought if this were to be approved, he knew of approximately 12 vehicles that could be in violation. Mr. Scott stated he first tries to educate the public, and then tries to gain compliance.

Vice Mayor del Aguila asked if RVs were a large issue, and if they could have a place where RVs could park.

Chief DeBoard indicated that large boats were a big part of the issue, and Mr. Scott stated the RV issue was not as bad as inoperable vehicles. Mr. Scott said he had good luck with talking to the vehicle owners. He confirmed the example of the RV in the PowerPoint was in a residential area.

In response to queries from Vice Mayor del Aguila about curb ramps, Chief DeBoard stated that they would educate the public about not parking there. In high traffic areas, she would recommend some visible yellow paint, but stated that was not necessary under the code.

**January 25, 2022
(public hearing)**

Pointing to the large commercial vehicles with attachments, Mr. Scott responded to Vice Mayor del Aguila and stated that was in issue throughout the town. He indicated that during work hours, a lot of the vehicles were removed. Mr. Scott thought it might be helpful to provide an alternative place for these vehicles to park.

There was a brief question and answer session between Councilmember Regan, Chief DeBoard, and Mr. Scott.

In response to queries from Councilmember Regan about the distance from curb ramps, Chief DeBoard said the intent was not to block the ramps, so they were accessible to use. She stated that the photo examples in her PowerPoint were egregious violations. Mr. Scott clarified what would constitute as blocking the driveway.

Responding queries from Mayor Olem, Chief DeBoard discussed the rules for RVs. She stated that it would be a zoning violation for those types of vehicles to park in the driveway.

There was a brief exchange between Councilmember Singh and Mr. Scott about his professional experience and the number of vehicles parked on the streets that were from other localities.

Mayor Olem asked if there were any public comments on item 22-O-03.

The public hearing was held, and the following members of the audience provided comments supporting the proposed ordinance:

- Pat Voltmer, 284 Missouri Avenue, Herndon;
- Doug Barnes, 703 Archer Court, Herndon;
- Charles Foster, 1999 Lakeport Way, Reston, who was town's previous parking enforcement officer;
- Elsa Berhane, 915 Branch Drive, Herndon;
- Barbara Glakas, 935 Barton Oaks Place, Herndon, who asked the Council to review the distance requirement from driveways;
- Charles Williams, 421 Queens Row Street, Herndon, who stated as a full disclosure that he was President of the Hunters Creek HOA, but he was speaking as a citizen;
- Rachel Given, 115 Shannon Place, Herndon;
- Jean Deavers, 11120 Shannon Place, Herndon, who presented a PowerPoint, which is on file in the Town Clerk's office. Ms. Deavers stated she was representing herself that night, and not her HOA Board.

**January 25, 2022
(public hearing)**

- Pedro Yohannes, 915 Branch Drive, Herndon;
- Rory Spencer, 620 Worchester Street, Herndon;
- Rebecca Bonton, 1211 Bond Street, Herndon, who suggested a longer time limit for commercial vehicles on the street, along with a commercial lot for trucks to park, and painted parking spaces on the street; and
- Marcela (last name inaudible), 664 Old Hunt Way, Herndon, who suggested having commercial vehicles register with the town for a commercial parking pass.

[Note: Councilmember Friedrichs left the meeting at 9:00 p.m.]

Seeing no other comments, Mayor Olem closed the public hearing and moved to Council level for discussion and action.

Main Motion

(Subsequently Substituted)

Councilmember Regan moved to approve Ordinance 22-O-03, to amend and reenact Chapter 42 (MOTOR VEHICLES AND TRAFFIC), Article I (Definitions), Article IV (Stopping, Standing, Parking), and Article V (Vehicles), with regard to parking on town streets and towing, as presented.

Motion seconded by Councilmember Singh.

There were comments from Council on the motion.

Councilmember Regan stated that with how long this has been an issue, he thought now was the time to act on parking regulations. He stated that this would be one tool in the toolbox, and the Council would soon discuss other parking measures, like zoned parking. One thing he thought the Council should discuss soon was non-resident vehicles parked on the street. He relayed a personal anecdote about the safety issues on town streets.

Councilmember Singh stated he was aware of the parking issues, specifically on Bond Street, and had wondered why nothing was done. He stated that for all his reservations, he would support the ordinance to clear the streets of people who park in Herndon on a part time basis. He emphasized the other parking issues he mentioned that evening, which he thought needed to be solved.

Councilmember Dhakal stated that the number one issue he heard about in town is parking, along with the many issues related to it. The parking issues in town had been going on a long time and he that prioritizing safety is necessary. Councilmember Dhakal recommended that the Council start the process of initiating a zoning ordinance text amendment so residents with a commercial vehicle could park it on their private driveway. He stated that finding a lot for the commercial vehicles to park, and maybe

**January 25, 2022
(public hearing)**

charging a fee, would also be something to consider. Councilmember Dhakal stated he agreed with Councilmember Regan that the long-term parking by non-residents needed to be reduced, and he expressed his commitment to find a solution.

Discussion on the process

Following his comments, Councilmember Dhakal asked Councilmember Regan if he would be open to a “friendly amendment,” changing the parking distance from a private driveway from 10 feet to five feet. He was not sure if it was called a “friendly amendment” or an alternative motion.

Councilmember Regan stated that if it were the group’s consensus, he would do that, whether he would withdraw his motion, submit a new one, or edit it. He thought with the commercial vehicles gone, there would be more room to park, and the 10-foot setback would not be too much of an issue. If it were an issue, he stated they could come back and change the distance.

Responding to Councilmember Dhakal, Mayor Olem stated that Councilmember Regan was waiting for everyone to speak prior to deciding on the “friendly amendment.”

Vice Mayor del Aguila stated he would support Councilmember Dhakal’s suggested change. Going into the next work session, or the next Town Council Strategic Planning Initiative Meeting, he thought there were several traffic issues that needed to be discussed, including: adding stop signs, considering another parking enforcement officer, painting parking spaces, and incremental cost. He reiterated that if it makes sense and is feasible and legal, he would like to see dedicated spaces for resident’s large commercial vehicles and RVs.

Mayor Olem stated she supported the proposed ordinance. She would prefer the five-foot distance from the driveway, but she stated she would also support it at 10 feet. She recognized Councilmember Regan for a motion.

Clarification

Responding to Councilmember Regan, Ms. Yeatts stated that typically, a substitute motion would be required. However, this was a quite simple amendment. She stated it was really only a change in Section 42-152 from 10 feet to five feet, so Councilmember Regan could make this change by way of an amendment. It would have to be accepted by the motion maker, Councilmember Regan, and seconder, Councilmember Singh.

Councilmember Singh stated that he wanted to amend this further, and Ms. Yeatts responded that she would reserve her opinion based on what Councilmember Singh suggested.

**January 25, 2022
(public hearing)**

Councilmember Singh stated that whether the parking distance was five or 10 feet, there was the issue of "not allowing anybody in the first space, so for a commercial vehicle to park...(it) will be far safer if you increase the distance...on all those roads. So, five feet or 10 feet, plus no commercial vehicle parked in the first space."

Councilmember Regan stated that Councilmember Singh mentioned an excellent point, agreeing that the commercial vehicles were most problematic in the first space against the driveways or the intersections. He thought, the way it was written, even if the distance was reduced to five feet, commercial vehicles were not permitted on the street.

Ms. Yeatts clarified that commercial vehicles were not permitted, "not longer than two hours."

Councilmember Singh indicated he wanted to make an amendment.

Ms. Yeatts stated that Councilmember Dhakal had a pending request to amend the motion. She suggested, given the request received and to be clear, that Councilmember Dhakal should make a substitute motion, and the Council handle it that way. If Councilmember Singh had another substitute motion after that, they could manage it then.

Councilmember Singh stated that he was not talking about (inaudible), what they just talked about. He asked Ms. Yeatts if he could make another amendment.

Ms. Yeatts stated that Councilmember Singh would need to make a substitute motion. Councilmember Regan's motion was currently on the floor, which Councilmember Singh had seconded. Councilmember Dhakal was now requesting either an amendment or substitute motion, which had to be resolved. Once that was resolved, there could be another substitute motion, which was what she thought Councilmember Singh was proposing.

Councilmember Singh stated that they would finish this, and then he would "tell you what I need."

Ms. Yeatts indicated that was her suggestion.

Councilmember Dhakal stated that he needed to make his motion first.

Ms. Yeatts stated that either Councilmember Dhakal would propose a substitute motion, or Councilmember Regan would need to withdraw his motion. She had not heard that Councilmember Regan was withdrawing his motion.

Councilmember Regan said that the substitute motion was fine.

**January 25, 2022
(public hearing)**

Substitute Motion

Councilmember Dhakal moved to **APPROVE** Ordinance 22-O-03, revised as follows:

“Sec. 42-152. Parking prohibited; fines imposed.

(b) Parking in the following manner or manners is unlawful:

(1) On or blocking a sidewalk\$50.00

(2) ~~Blocking~~ In front of, or within five ~~10~~ feet to either side of a public or private driveway.....50.00”

Councilmember Dhakal verified that he meant five feet to either side of a public or private driveway.

Motion seconded by Vice Mayor del Aguila.

Mayor Olem restated the substitute motion for clarity, which was to **approve Ordinance 22-O-03, changing line 117, item 2, from 10 feet to five feet in front of a driveway.**

Clarification

Councilmember Singh stated he was still confused about the first parking space.

Vice Mayor del Aguila stated he had a point of order, that the Council was now considering Councilmember Dhakal’s substitute motion.

Responding to Councilmember Singh’s queries, Mayor Olem stated that as Councilmember Regan explained, if the Council passed the proposed resolution with the five-foot distance, there would not be a commercial vehicle parked on that street.

Ms. Yeatts clarified a commercial vehicle was limited to parking two hours on the street.

Councilmember Singh stated that the first space would still be problematic.

Ms. Yeatts stated that there was already a substitute motion on the floor. The Council would have to decide on the substitute motion, and if it failed, they would return to the original motion.

Vice Mayor del Aguila believed that the Councilmember would have to make the request and it would need a second.

**January 25, 2022
(public hearing)**

Ms. Yeatts stated that would be the second substitute motion.

Councilmember Singh asked if he could amend Councilmember Dhakal's motion, and Ms. Yeatts responded by saying the Council was proceeding by way of substitute motions. She requested a moment to consult the rules.

Mayor Olem stated she would call a short recess.

RECESS

At 9:52 p.m., Mayor Olem called a brief recess for Ms. Yeatts to review the rules. At 9:57 p.m., the Town Council public meeting reconvened in Herndon Council Chambers Building, all members present, except for Councilmembers Alam and Friedrichs, who were absent, and with Mayor Olem presiding.

Continued Action on Ordinance 22-O-03

Clarification

Ms. Yeatts clarified that there were already two motions, the original motion, and the substitute motion, and a third motion could not be added.

Councilmember Singh stated that he understood he could not amend this motion anymore. He thought that the town should "create a program, under which neighborhood parking spaces for commercial vehicles is done." He had identified two areas, one near Cavalier Drive and one near Burwick Drive, for that purpose.

Mayor Olem stated she would support the substitute motion.

Vote on Substitute Motion (Approved)

The motion was restated for clarity, which was to **APPROVE Ordinance 22-O-03**, revised as follows:

"Sec. 42-152. Parking prohibited; fines imposed.

(b) Parking in the following manner or manners is unlawful:

(1) On or blocking a sidewalk\$50.00

(2) Blocking In front of, or within five ~~10~~ feet to either side of a public or private driveway.....50.00"

**January 25, 2022
(public hearing)**

The question was called on the motion, which carried by a 5-0 roll call vote. The vote was: Councilmembers Dhakal, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Friedrichs were absent.

Ordinance 22-O-03, to amend and reenact Chapter 42 (MOTOR VEHICLES AND TRAFFIC), Article I (Definitions), Article IV (Stopping, Standing, Parking), and Article V (Vehicles), with regard to parking on town streets and towing.

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

1. The following sections or provisions of the Herndon Town Code (2000), are amended and reenacted as follows:

CHAPTER 42 (MOTOR VEHICLES AND TRAFFIC)

Article I. In General

Sec. 42-1. Definitions.

- (b) These terms shall convey these respective meanings.

Areas zoned for residential use. All areas of the town which have been zoned to a zoning classification which permits one or more residential dwelling units. The zoning boundaries shall be used in the enforcement of the requirements of this chapter. However, in any case in which a street serves as the boundary between an area zoned for residential use and an area zoned for another use, then the centerline of that street shall be considered as the boundary between the area zoned for residential use and the area zoned for another use.

Commercial vehicle.

- (1) Any solid waste collection vehicle, tractor truck or tractor truck/semitrailer or tractor truck/trailer combination (or any part thereof), dump truck, concrete mixer truck, towing and recovery vehicle, box type truck, flatbed truck **with a registered gross weight of 12,000 pounds or more, or** and any heavy construction equipment, whether located on private property or on a truck, trailer, or semitrailer;
- (2) Any trailer, semitrailer, or other vehicle in which food or beverages are stored or sold;

**January 25, 2022
(public hearing)**

- (3) Any trailer or semitrailer used for transporting landscaping or lawn-care equipment whether or not such trailer or semitrailer is attached to another vehicle;
- (4) Any taxicab;
- (5) Any motor vehicle licensed by the Commonwealth for use as a common or contract carrier or as a limousine;
- (6) ~~Any truck with a registered gross weight, or gross vehicle weight rating as defined in § 46.2-341.4, Code of Virginia, of 10,000 or more pounds; vehicle more than 21 feet in length or more than eight feet in height including appurtenances attached to the vehicle, or with a width of 102 inches or more, or with a gross weight of 12,000 or more pounds, other than:~~ commercial vehicles used by a public service company, as defined in the Code of Virginia § 56-1 or by others working on its behalf; boat and recreational vehicles as defined in Code of Virginia § 46.2; school buses used on a current and regular basis to transport students; clearly marked privately owned vehicles displaying accessible parking placards or license plates, not for hire, driven by or used for transport of persons with disabilities; commercial vehicles used in the provision of cable television service as defined in the Code of Virginia § 15.2-2108.1; moving vehicles, within 48 hours of execution of the leasing contract; or commercial vehicles used in the provision of propane gas service;
- (7) Any other trailer, ~~or semitrailer, used for commercial purposes; or double axle utility trailer, regardless of whether a state safety inspection is required, except those designed to be used as a camper trailer or boat trailer or a single axle utility trailer, regardless of whether such trailer or semitrailer is attached to another vehicle; and~~
- (8) ~~Any motor vehicle or vehicle not described above, used for commercial purposes, and bearing on its exterior a commercial sign; and Any vehicle with three or more axles.~~
- (9) ~~Any pick-up truck, panel truck, or truck with attached, external ladder or equipment racks utilize for commercial purposes.~~

Highway. This term refers to public streets as defined in § 46.2-100, Va. Code. The Town Council may by ordinance specifically designate private streets as "highways" for the purpose of this chapter.

**January 25, 2022
(public hearing)**

Utility trailer. A small non-motorized trailer which is generally pulled by a motorized vehicle and features an open-top rear cargo area.

Sec. 42-3. - Adoption of state law.

- (a) Pursuant to Code of Virginia, §§ 46.2-1313 and ~~1-18.39-21-220~~, the provisions contained in Code of Virginia, title 46.2, **as amended**, and ~~in Code of Virginia, of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 and in effect on January 1, 2022~~, including all procedural, substantive and penalty provisions relating to the operation of vehicles in this commonwealth are adopted; **and** incorporated in this chapter by reference, made a part of this chapter as fully as if set forth in this section, and are made applicable within the town. **References therein to highway shall be deemed to refer to those ways or places defined as "Highway" in §46.2-100 of the Code of Virginia 1950, as amended whenever such ways or places are located in the town.** The incorporation by reference of these statutes shall not apply to those provisions, the violation of which constitutes a felony, or those provisions which are expressly inapplicable to towns.

Article IV. Stopping, Standing, Parking

Division 1. Generally

Sec. 42-152. Parking prohibited; fines imposed.

- (b) Parking in the following manner or manners is unlawful:
- (1) On or blocking a sidewalk\$50.00
 - (2) ~~Blocking In front of, or within five feet to either side of a~~ public or private driveway 50.00
 - (3) Within an intersection or within 20 feet of an intersection 50.00
 - (4) Within 15 feet of a fire hydrant 50.00
 - (5) On or across a pedestrian crosswalk 50.00
 - (6) Within 20 feet of a crosswalk at an intersection 50.00

**January 25, 2022
(public hearing)**

- (7) Within 30 feet of the approach to any flashing beacon, stop sign or traffic control signal located at the side of a street 50.00
- (8) Within 15 feet of the driveway entrance to any fire station or on the side of a street opposite the entrance to any fire station within 75 feet of the entrance when properly signposted 50.00
- (9) On the roadway side of any vehicle parked at the edge or curb of a street, this violation being known as double parking 50.00
- (10) In a restricted zone where such zone is marked by official signs 50.00
- (11) In a marked fire lane 50.00
- (12) At any place where town signs prohibit parking 50.00
- (13) In any location or manner which operates to obstruct traffic, in violation of section 42-156(a) 50.00
- (14) On the wrong side of the street (left wheel to curb) 50.00
- (15) Across marked lines of a parking space 50.00
- (16) Over or on top of the curb 50.00
- (17) Within 15 feet on either side of a sign designating a bus stop 50.00
- (18) Beyond the posted time or time allowed by a parking meter, or by other sign or device, this violation being known as overtime parking 50.00
- (19) On any highway, or public street, or public alley, or on any publicly owned place open to the public for purposes of vehicular travel, without the display of a valid state license plate or valid state license plates, as required by law 50.00
- (20) On any highway, or public street, or public alley, or on any publicly owned place open to the public for purposes of vehicular travel, without the display of a valid state vehicle safety inspection sticker, if required by law 50.00
- (21) On any highway or public street or public alley or on publicly owned property, an inoperable motor vehicle 50.00

**January 25, 2022
(public hearing)**

- (22) Blocking a public or private alley 50.00
- ~~(23) For the purpose of selling any automobile, truck, trailer, or other vehicle, or for advertisement purposes, in violation of section 42-154 50.00 (Repealed by Ordinance 19-0-19)~~
- ~~(24)~~(23) A trailer, semitrailer, or both in any area of town zoned for residential use in violation of section 42-160 50.00
- ~~(25)~~(24) In a park in a manner inconsistent with posted signs or other than in designated parking areas in violation of section 50-49 50.00
- ~~(26)~~(25) In a park during other than daylight hours in violation of section 50-107 50.00
- ~~(27)~~(26) A commercial vehicle in an area zoned for residential use in violation of section 42-161 50.00
- ~~(28)~~(27) In a residential permit parking zone in violation of section 42-222 100.00
- (28) So as to prevent the use of curb ramps located on public property or on privately owned property open to the public 50.00

Sec. 42-160. Parking of trailers, semitrailers ~~or~~, boats or recreational vehicles in residential zones.

- (a) No person shall park a trailer, semitrailer ~~or~~, boat ~~or recreational vehicle~~ on or alongside the roads, highways and streets in any area of the town zoned residential use; provided, however, that a trailer, semitrailer ~~or~~, a boat while on a trailer, ~~or recreational vehicle~~ may be parked on such street for the purpose of loading or unloading; ~~provided further, that but in no event shall such trailer, semitrailer or, boat while on a trailer may, or recreational vehicle~~ be temporarily parked for necessary repairs for a period not to exceed of more than 72 hours.

Sec. 42-161. Parking commercial vehicles in areas zoned for residential use.

**January 25, 2022
(public hearing)**

- (a) ~~Except as provided below in this section, a~~ No person shall park any commercial vehicle on the roads, highways, or streets (street) in areas zoned for residential use in the town for a continuous period of more than two hours.
- (b) One resident of each single-family detached or attached, multiple-family, ~~garden court~~, or two-family dwelling unit in areas zoned for residential use may park per dwelling unit on the street with respect to and adjoining or adjacent to the dwelling unit of the resident one vehicle licensed as a taxicab or limousine ~~or one vehicle described in subparagraph (8), or one vehicle described in subparagraph (9) of the definition of commercial vehicle found in section 42-1,~~ provided in all such cases other vehicles are permitted to park there.
- (c) The use of the term "per dwelling unit" in this section means that the parking of commercial vehicles under this section shall not be aggregated with the parking of commercial vehicles on private property under the Zoning Ordinance [chapter 78].
- (d) The provisions of this section shall not apply to a commercial vehicle ~~(i) when picking up or discharging passengers, (ii)~~ (i) when temporarily parked pursuant to the performance of work or service at a particular location, or ~~(iii)~~ (ii) when parked in a commercial office, planned development, mixed use, or neighborhood commercial zoning district, ~~with respect to and~~ adjoining or adjacent to a commercial use.

Article V. Vehicles

Division 2. Abandoned, Unattended or Immobile Vehicles

Subdivision II. Abandoned Vehicles

Sec. 42-261. Definitions.

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned motor vehicle means a motor vehicle, trailer or semitrailer that:

- (1) **Weights at least 75 pounds; and**
- (2) Is left unattended on public property for more than 48 hours in violation of a state law or ~~local~~ **town** ordinance; or

**January 25, 2022
(public hearing)**

- (3) Has remained for more than 48 hours on private property without the consent of the property's owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property; or
- (4) Is left unattended on the shoulder of a highway for more than 48 hours.

Inoperable abandoned motor vehicle as used in Sec. 42-265 means an abandoned motor vehicle which is inoperable and whose fair market value, as determined by the director of finance using the county assessment records and information, is less than the cost of its restoration to an operable condition.

Sec. 42-262. Abandoning motor vehicles prohibited.

No person shall cause any motor vehicle to become an abandoned motor vehicle as defined in section 42-261.

Sec. 42-263. - Notice to owner of vehicle taken into custody.

- (a) ~~The town when it takes an abandoned motor vehicle into custody shall, within 15 days, by registered or certified mail, return receipt requested, notify the owner of record of the motor vehicle and all persons having security interests in the vehicle of record, that it has been taken into custody.~~

Any uniformed authorized law enforcement personnel finding an abandoned motor vehicle may remove it or have it removed.

- (b) **The town when it takes an abandoned motor vehicle into custody shall, within 15 days, by registered or certified mail, return receipt requested, notify the owner of record of the motor vehicle and all persons having security interests in the vehicle of record, that it has been taken into custody.**

~~(b)~~(c) The notice shall:

- (1) State the year, make, model, and serial number of the abandoned motor vehicle;
- (2) Set forth the location of the facility where it is being held; and
- (3) Inform the owner and any persons having security interests of their right to reclaim it within 15 days after the date of the notice after payment of all towing, preservation and storage charges resulting from placing the vehicle in custody.

**January 25, 2022
(public hearing)**

- (e)(d)The notice shall state that the failure of the owner or persons having security interests to reclaim the vehicle within the time provided shall constitute a waiver by the owner and all persons having any security interests of all right, title and interest in the vehicle and consent to the sale of the abandoned motor vehicle at a public auction.
- (d)(e)If records of the state department of motor vehicles contain no address for the owner or no address of any person shown by the department's records to have a security interest, or if the identity and addresses of the owner and all persons having security interests cannot be determined with reasonable certainty, notice by publication once in a newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this subdivision as to any person who cannot be notified pursuant to the foregoing provisions of this section. Notice by publication may contain multiple listings of abandoned motor vehicles. Any notice of this kind shall be within the time requirements prescribed by this section for notice by mail and shall have the same contents required for a notice by mail.
- (e)(f)The consequences of failure to reclaim an abandoned motor vehicle shall be as set forth in a notice given in accordance with and pursuant to this section.

Subdivision III. Immobilized and Unattended Vehicles

Sec. 42-281. Definitions.

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Immobilized or unattended vehicles means a motor vehicle, trailer, semitrailer, or part thereof **weighing more than 75 pounds**, which is:

- (1) Left unattended on a public highway or other public property and constitutes a traffic hazard;
- (2) Illegally parked;
- (3) Left unattended for more than ten days either on public property or on private property without the permission of the property owner, lessee or occupant;
- (4) Immobilized on a public roadway by weather conditions or other emergency situation.

January 25, 2022
(public hearing)

Sec. 42-282. General regulations Immobilized or unattended vehicles, prohibited; removal.

- ~~(a) No person shall leave any motor vehicle, trailer, semitrailer, or part or combination thereof, unattended on or adjacent to any roadway if it constitutes a hazard in the use of the highway.~~
- ~~(b) Any law enforcement officer may remove it or have it removed to a storage area for safekeeping and shall report the removal to the state department of motor vehicles and to the owner of the motor vehicle, trailer, semitrailer, or combination, as promptly as possible.~~
- ~~(c) Before obtaining possession of the motor vehicle, trailer, semitrailer, or combination, its owner shall pay to the parties entitled thereto all costs incidental to its removal or storage.~~
- ~~(d) In any violation of this section the owner of such motor vehicle, trailer, semitrailer, or part or combination of a motor vehicle, trailer or semitrailer shall be presumed to be the person committing the violation; however, this presumption shall be rebuttable by competent evidence.~~
- ~~(e) If any person convicted of violating this section fails or refuses to pay these costs or if the identity or whereabouts of the owner is unknown and unascertainable after a diligent search has been made or after notice to the owner at his address as indicated by the records of the state department of motor vehicles and to the holder of any lien of record with the department, against the motor vehicle, trailer, semitrailer or combination, the town may, after 30 days and after having the value of such motor vehicle, trailer, semitrailer, or combination, determined by three disinterested dealers, dispose of it by public or private sale.~~
- ~~(f) The proceeds from the sale shall be forthwith paid by him into the town treasury.~~
- ~~(g) If after the sale or other disposition of the motor vehicle, trailer, semitrailer, or combination, the ownership of a motor vehicle, trailer or semitrailer at the time of its removal is established satisfactorily to the town by the person claiming its ownership, the town shall pay him so much of the proceeds from the sale or other disposition of the motor vehicle, trailer, semitrailer, or combination, as remains after paying the costs of removal, storage, investigation of ownership, appraisal and sale.~~
- (a) No person shall cause any motor vehicle, trailer, semitrailer, or part or combination thereof to be immobilized or unattended.**

**January 25, 2022
(public hearing)**

- (b) Removal of immobilized or unattended vehicles as defined in 42-281 shall be carried out by or under the direction of a law enforcement officer, or other uniformed authorized law enforcement personnel.
- (c) The removal of motor vehicles, trailers, semitrailers, and parts thereof, from private property shall only be upon the written request of the owner, lessee or occupant of the premises.
- (d) The person at whose request the motor vehicle, trailer, semitrailer, or part of a motor vehicle, trailer or semitrailer, is removed from private property shall indemnify the town against any loss or expense incurred by reason of removal, storage or sale thereof.
- (e) It shall be presumed that such motor vehicle, trailer, semitrailer, or part thereof is abandoned if it (i) lacks either a current license plate; or a current county, city or town license plate or sticker; or a valid state safety inspection certificate or sticker; and (ii) it has been in a specific location for four days without being moved. As promptly as possible, each removal shall be reported to Herndon Police Department Dispatch and to the owner of the motor vehicle, trailer, or semitrailer.
- (f) As promptly as possible, each removal shall be reported to Herndon Police Department Dispatch and to the owner of the motor vehicle, trailer, or semitrailer.
- (g) Before obtaining possession of the motor vehicle, trailer, semitrailer, or part thereof, the owner shall pay to the parties entitled thereto all costs incidental to its removal and storage and locating the owner. If the owner fails or refuses to pay the cost or if his identity or whereabouts is unknown and unascertainable after a diligent search has been made, and after notice to him at his last known address and to the holder of any lien of record with the office of the state department of motor vehicles against the motor vehicle, trailer, semitrailer, or part of a motor vehicle, trailer or semitrailer, the vehicle shall be treated as an abandoned vehicle under the provisions of subdivision II of this division.

~~Sec. 42-283. Removal.~~

- (a) ~~Removal of vehicles as defined in section 42-263 shall be carried out by or under the direction of a law enforcement officer.~~

**January 25, 2022
(public hearing)**

- (b) ~~The removal of motor vehicles, trailers, semitrailers, and parts thereof, from private property shall only be upon the written request of the owner, lessee or occupant of the premises.~~
- (c) ~~The person at whose request the motor vehicle, trailer, semitrailer, or part of a motor vehicle, trailer or semitrailer, is removed from private property shall indemnify the town against any loss or expense incurred by reason of removal, storage or sale thereof.~~
- (d) ~~It shall be presumed that such motor vehicle, trailer, semitrailer, or part thereof is abandoned if it (i) lacks either a current license plate; or a current county, city or town license plate or sticker; or a valid state safety inspection certificate or sticker; and (ii) it has been in a specific location for four days without being moved. As promptly as possible, each removal shall be reported to a local governmental office to be designated in the ordinance and to the owner of the motor vehicle, trailer, or semitrailer.~~
- (e) ~~As promptly as possible, each removal shall be reported to a local governmental office to be designated in the ordinance and to the owner of the motor vehicle, trailer, or semitrailer.~~
- (f) ~~Before obtaining possession of the motor vehicle, trailer, semitrailer, or part thereof, the owner shall pay to the parties entitled thereto all costs incidental to its removal and storage and locating the owner. If the owner fails or refuses to pay the cost or if his identity or whereabouts is unknown and unascertainable after a diligent search has been made, and after notice to him at his last known address and to the holder of any lien of record with the office of the state department of motor vehicles against the motor vehicle, trailer, semitrailer, or part of a motor vehicle, trailer or semitrailer, the vehicle shall be treated as an abandoned vehicle under the provisions of subdivision II of this division.~~

Division 3. Removal or Immobilization for Outstanding or Unpaid Parking Violations

Sec. 42-301. Conditions warranting removal.

Whenever there is found any motor vehicle, vehicle, or trailer parked upon a public street or highway or other public ground within the town against which there are three or more outstanding unpaid or otherwise unsettled parking violation notices, such motor vehicle, vehicle, or trailer may, under the direction of a ~~town police officer~~ **authorized law enforcement personnel**, be removed or conveyed, by towing or otherwise, to a place within the town or in an adjacent locality, designated by the police chief for the temporary storage of such motor vehicle, vehicle, or trailer. Alternatively, such motor vehicle, vehicle, or trailer may be immobilized in such manner as to prevent its removal or operation except

**January 25, 2022
(public hearing)**

by authorized officers or members of the police department authorized law enforcement personnel.

Sec. 42-302. Notice of immobilization.

It shall be the duty of the ~~police officer~~ **uniformed authorized law enforcement personnel** removing or immobilizing such motor vehicle, vehicle, or trailer or under whose direction such motor vehicle, vehicle, or trailer is removed or immobilized, to inform as soon as practicable the owner of record of the removed or immobilized motor vehicle, vehicle, or trailer of the nature and circumstances of the prior unsettled parking violation notices for which, ~~or on account of which,~~ such motor vehicle, vehicle, or trailer was removed or immobilized. In any case involving immobilization of a motor vehicle, vehicle, or trailer under this division, there shall be placed on such motor vehicle, vehicle, or trailer, in a conspicuous manner, a notice warning that such motor vehicle, vehicle, or trailer has been immobilized and that any attempt to move such motor vehicle, vehicle, or trailer might damage it.

Sec. 42-303. Repossession or release.

The owner of an immobilized motor vehicle, vehicle, or trailer, or other duly authorized person, shall be allowed 24 hours from the time of immobilization to repossess or secure the release of the motor vehicle, vehicle, or trailer. Failure to repossess or secure the release of the motor vehicle, vehicle, or trailer within this period may result in the removal of such motor vehicle, vehicle, or trailer to a storage area for safekeeping **under the direction of uniformed authorized law enforcement personnel.**

Sec. 42-304. - Payment of fines and costs.

The owner of such removed or immobilized motor vehicle, vehicle, or trailer or other duly authorized person, shall be permitted to repossess or to secure the release of such motor vehicle, vehicle, or trailer by payment of outstanding parking violation notices for which the motor vehicle, vehicle, or trailer was removed or immobilized, all reasonable costs incidental **to the** immobilization, removal and storage of the motor vehicle, vehicle, or trailer, and all reasonable costs incident to efforts to locate the owner of the motor vehicle, vehicle, or trailer. Should the owner fail or refuse to pay such fines and costs, or should the identity or whereabouts of the owner be unknown and unascertainable, the motor vehicle, vehicle, or trailer ~~may be~~ **may be** sold in accordance with the procedures set forth in ~~subdivision II of division 2 of this article.~~ **in Section 46.2-1213 of the Code of Virginia.**

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

**January 25, 2022
(public hearing)**

7. Resolution 22-G-03, to consider Special Exception application SE #21-03, 1315 and 1317 Monroe Street, to allow the placement of fill in order to construct two new single-family dwellings on two existing single-family lots within the FPO, Floodplain Overlay District.

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, January 7, and January 14, 2022, issues.

Mayor Olem recognized David Stromberg, Zoning Administrator, who presented the staff report and PowerPoint, dated January 18, 2022, which are on file in the Town Clerk's office. This resolution was before the Town Council because the property was located in the floodplain district, which required a special exception for any type of development, regardless of the project's size. He reviewed the requirements and studies that the applicant had to submit to the town; existing conditions; the floodplain boundary; and the proposed development, which would include the installation of approximately two feet of fill so the new foundation of the two homes would be located above the floodplain. Mr. Stromberg stated that in the engineer's review of the application, they found it would not adversely impact adjacent properties. He reviewed the next steps, which included several more rounds of review.

At its public hearing on December 13, 2021, the Planning Commission recommended approval, with three conditions: substantial conformance with the submitted plan; approval of this special exception does not approve any unauthorized encroachment into the RPA; and that they use most current version of FEMA flood map data. Staff recommends approval of the proposed resolution, as presented.

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

Responding to queries from Vice Mayor del Aguila, Mr. Stromberg stated there had been no changes since the work session.

Responding to queries from Councilmember Singh, Mr. Stromberg stated that anything beyond two decimal points was what the federal government considered "no change" in the floodplain. Councilmember Singh replied with comments regarding the importance of insurance in the floodplain.

Mayor Olem recognized the applicant and applicant's engineer for comments, and they did not have any to add. The Council did not have any questions for the applicant or applicant's engineer.

As there were no comments from the audience, Mayor Olem closed the public hearing and moved to Council level for discussion and action.

Vice Mayor del Aguila moved to approve Resolution 22-G-03, to consider Special Exception application SE #21-03, 1315 and 1317 Monroe Street, to allow the placement

**January 25, 2022
(public hearing)**

of fill in order to construct two new single-family dwellings on two existing single-family lots within the FPO, Floodplain Overlay District, pursuant to the staff's recommendation, as presented.

Councilmember Singh seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by a 5-0 roll call vote. The vote was: Councilmembers Dhakal, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Friedrichs were absent.

Resolution 22-G-03, to consider Special Exception application SE #21-03, 1315 and 1317 Monroe Street, to allow the placement of fill in order to construct two new single-family dwellings on two existing single-family lots within the FPO, Floodplain Overlay District.

WHEREAS, the applicants, Dina Abdel-Hamid and David Hawa, have submitted an associated application, special exception SE #21-03, proposing to place fill in the floodplain to allow the for the construction of two new single family dwellings on two existing single family lots at 1317 Monroe and 1315 Monroe and identified as Fairfax County Tax Map Reference Numbers: 0102 02 0001C and 0102 02 0001B; and

WHEREAS, any development within the floodplain requires a special exception to be approved by the town council; and

WHEREAS, the applicant is proposing certain improvements and alterations to the grade within the floodplain; and

WHEREAS, the applicant has demonstrated through hydraulic and hydrologic modeling analysis that the proposed improvements and grade changes will not result in an increase in flood heights or an increase in the extent of the floodplain; and

WHEREAS the applicant will incorporate the most recently issued FEMA flood maps- available and rerun the modeling analysis at the time of site plan final engineering; 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; and

**January 25, 2022
(public hearing)**

WHEREAS, the Town Council 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, the Town Council finds that the proposed development meets the purpose and intent of the Zoning Ordinance, in particular Section 78-155.3 Special exception and Section 78-60.2 Floodplain Overlay district, including the allowances and criteria found therein.

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

Approves Special Exception Application #21-03, 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 Section 78-60.2 and 78-155.3;

1. The proposed development shall be in substantial conformance with the "TOPOGRAPHIC SURVEY, FLOOD ELEVATION, AND LOT STUDY" located in Appendix A of the Flood Plain Study for The Estate James Edward Waters, Jr. & Nancy A. Waters and dated October 25, 2021.
2. A site specific delineation of the Resource Protection Area component of the Chesapeake Bay Preservation Area Overlay shall be provided concurrent with the submission of the Single Lot Development Plan and approval of this special exception does not approve any unauthorized encroachment into the RPA as outlined in Section 78-60.4 of the zoning ordinance.
3. The applicant shall perform new hydraulic and hydrodynamic analysis using the most recent flood insurance rate map issued by FEMA. In the event the draft FIRMs have not yet been finalized by FEMA and adopted by the town, the applicant shall use the draft FIRM.

[Note: The 'TOPOGRAPHIC SURVEY, FLOOD ELEVATION, AND LOT STUDY' located in Appendix A of the Flood Plain Study for The Estate James Edward Waters, Jr. & Nancy A. Waters dated October 25, 2021 is on file in the Department of Community Development.]

January 25, 2022
(public hearing)

GENERAL

8. Resolution 22-G-04, to provide to the Town Manager, Town Council Guidance on the FY 2023 Budget.

Mayor Olem recognized Robert Tang, Director of Finance, who presented the staff report dated January 18, 2022, and a handout which are on file in the Town Clerk's office. This resolution would provide the Council's budget guidance and parameters, to guide staff in preparing the FY 2023 Budget. It represents the starting point for the annual budget process. The budget guidance includes a balanced budget at current revenues using the current tax rates, addresses the rising costs associated with maintaining a competitive work force, rising fuel costs, continuing funding for town services and capital projects, and revenue appropriations needed to meet them. Included was a market-driven compensation analysis, retention forecast, and cost containment and cost redirection measures. This proposed resolution would include a continuing forward-looking budget, anticipating impacts due to the ongoing pandemic, supply chain challenges, and the downtown redevelopment project. Funding for lifecycle maintenance, assessment of the town's overall exposure, along with the revenue stream needed to properly maintain the town's assets, were emphasized.

Mr. Tang pointed to the screen, where he showed a summary of the FY 2023 budget process timeline. Right now, they were at the budget guidance resolution portion. He reviewed the next steps in the budget process, including staff and the Town Council meeting individually with the budget team and the Planning Commission receiving the CIP. Council would consider the direction for the proposed tax rates in March and would hold its budget public hearings in April. The CIP would be presented to the Council in May.

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

Responding to queries from Mayor Olem, Mr. Tang stated that staff planned to include changes to the business license fee, which was discussed earlier that evening, in coordination with the proposed advertised tax rate.

Vice Mayor del Aguila moved to approve Resolution 22-G-04, to provide to the Town Manager, Town Council Guidance on the FY 2023 Budget, as presented.

Councilmember Dhakal seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by a 5-0 roll call vote. The vote was: Councilmembers Dhakal, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Friedrichs were absent.

**January 25, 2022
(public hearing)**

Resolution 22-G-04, to provide to the Town Manager Town Council Guidance on the FY 2023 Budget.

WHEREAS, the Town Council is committed to providing the core services expected of a municipal government, providing quality services and facilities for residents and businesses of the town and continuously improving town government effectiveness and efficiency; and

WHEREAS, the Town Council is committed to maintaining the town's fiscal integrity; and

WHEREAS, the Town Council recognizes the FY 2023 budget priorities for funding must be set.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby directs the Town Manager to use the following guidance in preparing the FY 2023 budget:

Continue efforts to develop and maintain a strong fiscal position, to include:

- At Council's direction, preparing a balanced annual budget at current revenues using the current tax rates.
- At Council's direction, preparing a balanced annual budget that addresses the rising costs associated with maintaining competitive workforce, rising fuel cost, continuing funding for the town-wide service delivery and capital projects along with the additional revenue appropriations needed to meet them.
- Include in both options: Market-driven compensation analysis and retention forecast and Cost containment and cost redirection measures
- Continuing forward looking budget preparation in anticipation of future impacts associated with the ongoing pandemic, supply chain challenges, and downtown redevelopment project.
- Emphasizing the funding of life cycle maintenance that provides a comprehensive assessment of the town's overall exposure along with the revenue stream needed to properly maintain town assets.

**January 25, 2022
(public hearing)**

9. Resolution 22-G-05, to Award a Contract for Planning, Architectural and Engineering Services for the planning of the Transit-Related Small Area Plan, RFP #22-05.

Mayor Olem recognized Ahmad Zaki, Lead Planner, who presented the staff report, dated January 18, 2022, and PowerPoint which are on file in the Town Clerk's office. The project threshold went beyond \$100,000, which is why the Council was required to approve this item. The funding for the project would be provided by certain property owners located in the TRG, based on a Funding Agreement for Consulting Services between the town and these owners, approved by the Council on October 26, 2021.

Mr. Zaki outlined the procurement process. The town issued a Request for Proposal (RFP) #22-05 on October 12, 2021, with a deadline of November 12, 2021 to assist the town with the development of the small area plan. The RFP included the required steps and phases to plan redevelopment of the TRG into a new mixed-use and vibrant center, integrated with and complementing the Herndon Transit-Oriented Core (HTOC). The town received 11 proposals, and following review, staff recommends that Skidmore, Owings & Merrill, LLP (SOM), be awarded the contract in the amount of \$466,250.00, and any customary reimbursables for the solicited services. Therefore, staff recommends approval of the proposed resolution, as presented.

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

In response to queries from Councilmember Dhakal about the RFP process, Mr. Zaki stated staff focused on the quality and technical aspects of the proposal. Following the technical review, staff began price negotiations, which was how they came to this recommendation. He stated that pricing was part of the process, but it was not the only criteria.

Responding to the discussion, Mr. Ashton stated that what Councilmember Dhakal might be thinking about was the Invitation for Bid (IFB) process, which was used for road projects. In the IFB process, the focus is meeting the requirements for price. The RFP process was about technical evaluation and matching that to the capabilities of the vendor. Then, staff goes into competitive negotiation with the top vendor.

On motion of Councilmember Dhakal, seconded by Councilmember Singh, Resolution 22-G-05, to Award a Contract for Planning, Architectural and Engineering Services for the planning of the Transit-Related Small Area Plan, RFP #22-05, was approved by a 5-0 roll call vote as presented. The vote was: Councilmembers Dhakal, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Friedrichs were absent.

**January 25, 2022
(public hearing)**

Resolution 22-G-05, to Award a Contract for Transit Related Small Area Planning, RFP #22-05.

WHEREAS, the Town of Herndon advertised a Request for Proposals for the Transit Related Small Area Plan; and

WHEREAS, the Request for Proposal solicited services for an initial 18-months contract with an option of four (4) one-year mutual optional renewals; and

WHEREAS, the Request for Proposal was posted on October 12, 2021, on the eVA Commonwealth of Virginia procurement website and Town's website to maximize fullest competition; and

WHEREAS, eleven (11) proposals that were received from eleven (11) qualified vendors on November 12, 2021; and

WHEREAS, the Evaluation Committee assessed the proposals based on the criteria stated within the RFP with the results as follows:

1. SOM
2. SmithGroup, Inc.
3. Cunningham | Quill Architects
4. NBBJ
5. WDG Architecture
6. FXCollaborative Architects, LLP
7. Design Collective
8. Perkins Eastman Architects
9. Stantec Consulting Services, Inc.
10. Rummel, Klepper & Kahl, LLP
11. Streetsense Consulting, LLC; and

WHEREAS, it is staff's recommendation to award the contract to the top-ranked firm based upon the scope of services and criteria established within the RFP; and

WHEREAS, the budget for the contract implementation is provided by certain owners of properties located in the Transit-Related Growth Area based on a Funding Agreement for Consulting Services (the "Agreement")

**January 25, 2022
(public hearing)**

between the Town of Herndon and these owners, up to \$500,000. The agreement was presented to and approved by the Town Council on October 26, 2021.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby awards a contract to Skidmore, Owings & Merrill, LLP in the amount of \$466,250.00, and any customary reimbursables for the solicited services.

BE IT FURTHER RESOLVED by the Town Council of the Town of Herndon, Virginia, that the Mayor of the Town of Herndon, Virginia is authorized to sign and deliver the appropriate contract documents on such form approved by the Town Attorney and any other instrument necessary to evidence or effectuate the contract and authorizes the Town Manager to take the necessary actions to implement the contract.

CONSENT

10. **Resolution 22-G-06, authorizing an application to the Regional Jurisdiction and Agency Coordinating Committee (RJACC) of the Northern Virginia Transportation Authority (NVTA) for federal Regional Surface Transportation Program (RSTP) transportation funding for fiscal year 2028;**
11. **Resolution 22-G-07, to award Contract #B-22-06, Herndon Parkway & Van Buren Street Intersection Improvement Project;**
12. **Resolution 22-G-08, to reappoint Jeffrey J. Fairfield as the Town of Herndon representative to the Phase II Dulles Rail Transportation Improvements Tax District Advisory Board;**
13. **Resolution 22-G-09, to ratify an Extension of Sublicense pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between Town of Herndon and Arts Herndon, Inc., to extend the expiration date to June 30, 2022;**
14. **Resolution 22-G-10, to ratify a Lease Agreement pursuant to Ordinance 20-O-23, Continuity of Governmental Operations, as amended, between the Town and the Honorable Irene Shin, Member of the House of Delegates, for space at 397 Herndon Parkway; and**
15. **Resolution 22-G-11, to ratify an Extension of Sublicense pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between Town of Herndon and The Elden Street Players to extend the expiration date to June 30, 2022.**

**January 25, 2022
(public hearing)**

On motion of Vice Mayor del Aguila, seconded by Councilmember Regan, the Consent Agenda items were approved by a 5-0 roll call vote, without comment. The vote was: Councilmembers Dhakal, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Friedrichs were absent.

Resolution 22-G-06, Authorizing one application to the Regional Jurisdiction and Agency Coordinating Committee (RJACC) of the Northern Virginia Transportation Authority (NVTA) for federal Regional Surface Transportation Program (RSTP) transportation funding for fiscal year 2028.

WHEREAS, the town's RSTP project priority, titled '*East Elden Street Improvements and Widening*' (UPC 50100), is supported by the Northern Virginia Transportation Authority (NVTA), the Transportation Planning Board of the Metropolitan Washington Council of Governments, and the Commonwealth Transportation Board of Virginia; and

WHEREAS, the East Elden Street project is included in VDOT's Six-Year Improvement Program and 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 February 26, 2019, advises the improvement of East Elden Street; and

WHEREAS, the above capital improvement project is included in the town's adopted FY2020-FY2025 Capital Improvement Program; and

WHEREAS, on October 13, 1998, the Town Council adopted a resolution to provide guidance on the design for improvements to East Elden Street, between the eastern town line and the Monroe Street intersection; and

WHEREAS, on October 23, 2018, the Town Council adopted a resolution to update the prior Town Council resolutions (dated March 18, 2014 and October 13, 1998) in order to provide final guidance on the engineering design of roadway improvements along Elden Street, between the eastern town line and Monroe Street, to include bike lanes, cycle tracks and to address intermittent, localized flooding of Sugarland Run onto the roadway.

**January 25, 2022
(public hearing)**

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, does hereby authorize the Town Manager to submit one application to the Northern Virginia Transportation Authority, through the Virginia Department of Transportation, for FY2028 federal funding for the following project:

- a) an allocation funding request of up to \$1,600,000 in Regional Surface Transportation Program (RSTP) funding for the *East Elden Street Improvements and Widening* project - UPC 50100 (Monroe Street to Fairfax County Parkway).

Resolution 22-G-07, to award Contract #B-22-06, Herndon Parkway & Van Buren Street Intersection Improvement Project.

WHEREAS, the Herndon Parkway & Van Buren Street Intersection Improvement Project is in the Capital Improvement Program; and

WHEREAS, Contract #B-22-06, Herndon Parkway & Van Buren Street Intersection Improvement, was advertised on November 9, 2021; and

WHEREAS, a pre-bid conference was held on November 29, 2021 and was attended by one firm; and

WHEREAS, the following bids were received and opened on December 16, 2021 at a public bid opening:

<u>Contractor</u>	<u>Bid</u>
A&M Concrete Corporation	\$3,564,211.30
Sagres Construction Corporation	\$4,480,961.55
Fort Myer Construction Corporation	\$4,999,104.55
Anchor Construction Corporation	\$6,230,497.09; and

WHEREAS, the A&M Concrete Corporation submitted the lowest bid which was found to be responsive and responsible; and

WHEREAS, staff recommends in addition to the contract that a contingency of \$713,000, which is approximately 20 percent of the bid, be authorized; and

WHEREAS, funds to support this contract are available in the Capital Projects Account Number #015-0886-491740; and

**January 25, 2022
(public hearing)**

WHEREAS, reimbursement of funds up to \$3,564,211.30 or 100% of total construction costs, including contingency costs, are available through a combination of agreements that the Town of Herndon holds with the Virginia Department of Transportation (VDOT) and the Northern Virginia Transportation Authority (NVTa).

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards Contract #B-22-06, Herndon Parkway & Van Buren Street Intersection Improvement, to A&M Concrete Corporation, in the amount of \$3,564,211.30.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia hereby authorizes a contingency of \$713,000.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby authorizes the Town Manager's designee to approve contract modifications (change orders) that increase project scope and costs, utilizing the project contingency.

Resolution 22-G-08, to reappoint Jeffrey J. Fairfield as the Town of Herndon representative to the Phase II Dulles Rail Transportation Improvements Tax District Advisory Board.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby reappoints Jeffrey J. Fairfield as the Town of Herndon representative to the Phase II Dulles Rail Transportation Improvements Tax District Advisory Board chosen from the nominations submitted by the petitioners for a four-year term ending January 31, 2026.

Resolution 22-G-09, to ratify an Extension of Sublicense pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between Town of Herndon and Arts Herndon, Inc., to extend the expiration date to June 30, 2022.

WHEREAS, the parties entered into a Sublicense Agreement dated December 18, 2020 for the use of property licensed to the Town at 750 Center Street; and

WHEREAS, the Sublicense Agreement would have expired on December 31, 2021; and

**January 25, 2022
(public hearing)**

WHEREAS, Town and Arts Herndon desired to extend the term of the Agreement to expire on June 30, 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 Extension of Sublicense dated December 27, 2021 signed by the Town Manager between the Town of Herndon and Arts Herndon, Inc., in order to extend the Sublicense expiration date to June 30, 2022.

[Note: Attached for reference is the Extension of Sublicense dated December 27, 2021 signed by the Town Manager b/n the Town and Arts Herndon, Inc., in order to extend the Sublicense expiration date to June 30, 2022.]

**January 25, 2022
(public hearing)**

**Extension of Sublicense Pursuant to Ordinance 20-0-23 Continuity of
Governmental Operations**

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-0-23, as amended, this Extension of Sublicense dated December 27, 2021, hereby extends the December 31, 2021 termination date of the existing Sublicense between the Town of Herndon, a Virginia municipal corporation (Town) and Arts Herndon, Inc., a Virginia non-profit, charitable corporation (Sublicensee), dated December 18, 2020 for approximately 3,210 square feet of building space, outside lawn area, and gravel parking spaces located at 750 Center Street (the Sublicense) for a period of 6 months (the Extension).

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

1. The Sublicense is incorporated by reference.
2. The Sublicense shall terminate on June 30, 2022.
3. In all other respects, the Sublicense is confirmed.

TOWN OF HERNDON, VIRGINIA

ARTS HERNDON, INC

By: 
Name: William H. Ashton II
Title: Town Manager

By: 
Name: JOANNA ORMESHER
Title: PRESIDENT & CEO

APPROVED AS TO FORM

By: 
Name: Lesa J. Yeatts
Title: Town Attorney

**January 25, 2022
(public hearing)**

Resolution 22-G-10, to ratify a Lease Agreement pursuant to Ordinance 20-O-23, Continuity of Governmental Operations, as amended, between the Town and the Honorable Irene Shin, Member of the House of Delegates, for space at 397 Herndon Parkway.

WHEREAS, the parties entered into a Lease Agreement dated December 27, 2021 for office space in the Town owned building located at 397 Herndon Parkway to be used for constituent services; and

WHEREAS, the rent shall be \$1.00 per term beginning January 1, 2022 and will expire on December 31, 2023.

WHEREAS, the Lease Agreement 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 Lease Agreement dated December 27, 2021 signed by the Town Manager between the Town of Herndon and the Honorable Irene Shin, Member of the House of Delegates, for space at 397 Herndon Parkway in Herndon, Virginia.

[Note: Attached for reference is the Lease Agreement dated December 27, 2021 signed by the Town Manager b/n the Town and the Honorable Irene Shin, Member of the House of Delegates, for space at 397 Herndon Parkway.]

**January 25, 2022
(public hearing)**

LEASE AGREEMENT

THIS LEASE made on the 27th day of December 2021, by and between the TOWN OF HERNDON, a municipal corporation (Landlord) and the Honorable IRENE SHIN, Member of the House of Delegates (Tenant).

Recitals

Landlord is the owner of a building and premises located at 397 Herndon Parkway, Herndon, Virginia (the building).

Landlord and Tenant have agreed that Tenant will lease from Landlord, in consideration of the rent and other benefits, and under the terms and conditions specified here, a portion of the premises commonly known as part of the building at 397 Herndon Parkway, (as shown on Exhibit A, attached and incorporated by reference).

THEREFORE, the parties agree as follows:

1. **Commencement and Ending Date of Term.** Beginning January 1, 2022, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may possess the leased premises with the Tenant having the right to terminate the Lease upon 30 days prior written notice to the Landlord, and the Landlord having the right to terminate the Lease upon 90 days prior written notice to the Tenant. The term of this lease shall expire December 31, 2023.
2. **Rent.** Tenant shall pay Landlord on demand \$1.00 rent for the entire term.
3. **Use of Premises.** Tenant shall use the leased premises solely for an office for constituent services. Tenant shall have access to and from the leased premises and to the restrooms. Landlord retains for itself and its employees, agents, and invitees, a right of access through the leased premises to and from spaces. Tenant certifies to Landlord that uses of this space are consistent with the Town of Herndon Zoning Ordinance and architectural guidelines or ordinances of the Herndon Town Code.

**January 25, 2022
(public hearing)**

4. Policy Compliance. Tenant shall comply with all policies regarding the use of Town buildings, including the prohibition of alcohol and the use of recreational drugs or tobacco, as well as the Town building key policy.

5. Utility Charges. Landlord shall maintain and pay the cost of all utilities (except telecommunications) on the leased premises.

6. Liability Insurance. Tenant shall keep in effect a General Liability insurance policy with respect to the leased premises with a minimum limit of \$1,000,000.00 of coverage. The policy shall name the Town of Herndon as an additional insured. Satisfactory proof of insurance will be required. Town reserves the right to require additional insurance.

7. Hold Harmless of Landlord. Tenant shall hold harmless Landlord, its officers, agents, and employees from any and all claims, actions, damages, liability and expense, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises through the occupancy or use by Tenant.

8. Default. Tenant shall be in default upon failure to perform any term of this lease for more than five days after written notice of such failure shall have been given to Tenant or after Tenant's abandonment of the leased premises.

9. Rights and Remedies on Default. Landlord shall have the following rights on default of Tenant, which shall be cumulative, none excluding any other right allowed by this lease or by law.

a. Landlord may enter the leased premises and repossess the leased premises and remove Tenant and any others who may be occupying the leased premises and remove any property.

**January 25, 2022
(public hearing)**

b. Landlord may seize, remove and sell all of the personal property and fixtures of Tenant on the leased premises or remove and store such property at the cost of and for the account of Tenant.

10. Custodial. Landlord shall provide custodial services, consisting of emptying trash and vacuuming, once a week for the leased premises.

11. Waste or Nuisance. Tenant shall not commit any waste or nuisance upon the leased premises.

12. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any furnishings and equipment in the leased premises in their existing condition. Tenant shall at all times keep the leased premises in good order, condition, and repair. Tenant shall maintain the leased premises in a clean and sanitary condition. If Landlord is required to make any repairs by reason of Tenant's negligent or intentional act or omission, Tenant shall pay to Landlord the cost of the repairs as additional rent within ten days after written notice. Landlord shall be responsible for roof, structural integrity of the building, and replacement and repair of utility systems related to the leased premises. Except as provided in paragraph 15, Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

13. Notification of Hazard. Tenant and Landlord shall give immediate notice to the other in case of fire, accident, or defect in the leased premises or in any fixtures or personal property comprising the leased premises.

14. Alterations and Improvements. Except as provided in this paragraph, Tenant shall not make or cause to be made any alterations to the leased premises without first obtaining Landlord's written consent.

**January 25, 2022
(public hearing)**

15. Removal of Improvements and Restoration by Tenant. All alterations except lighting not necessary for normal use of the building or conformance with the Virginia Uniform Statewide Building Code made by Tenant shall remain the property of Landlord at the expiration or termination of the lease. This property will remain part of the leased premises and Tenant shall not have any obligation to remove it.

16. Loss and Damage. Landlord shall not be liable for any loss or damage to property of Tenant located on the leased premises. Landlord shall not be liable for any injury, death, or damage to persons or property associated with Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the leased premises. Landlord shall not be liable for any latent defect in the leased premises or in the building of which they form a part. All property of Tenant or its subtenants kept or stored on the leased premises shall be so kept or stored at the risk of Tenant or subtenants and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

17. Right of Entry. In addition to Landlord's right of access as described in paragraph 3, Landlord, its contractors, agents, or prospective purchasers or lessees, shall have the right to enter the leased premises during normal business hours to examine the same upon reasonable notice, either oral or written.

18. Quiet Enjoyment. Upon the observance of all Tenant's obligations of this lease, Tenant shall peaceably and quietly hold and enjoy the leased premises.

19. Surrender of Premises. At the expiration or termination of the term of this lease, Tenant shall surrender the leased premises in the same condition that the leased premises were in at the commencement of this lease, except as provided in paragraph 15, reasonable wear and tear

**January 25, 2022
(public hearing)**

excepted, and shall surrender all keys for the leased premises to Landlord.

20. Assignment and Subletting. Tenant may not assign this lease without prior written consent of Landlord. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

21. Binding on Successors/Assigns. All of the terms of this lease shall bind the successors and assigns of Landlord and Tenant, except where the assignment is ineffective due to lack of Landlord's consent.



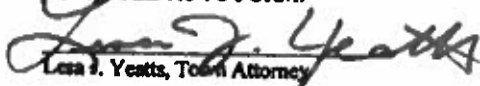
Irene Shin
Member House of Delegates

TOWN OF HERNDON, VIRGINIA



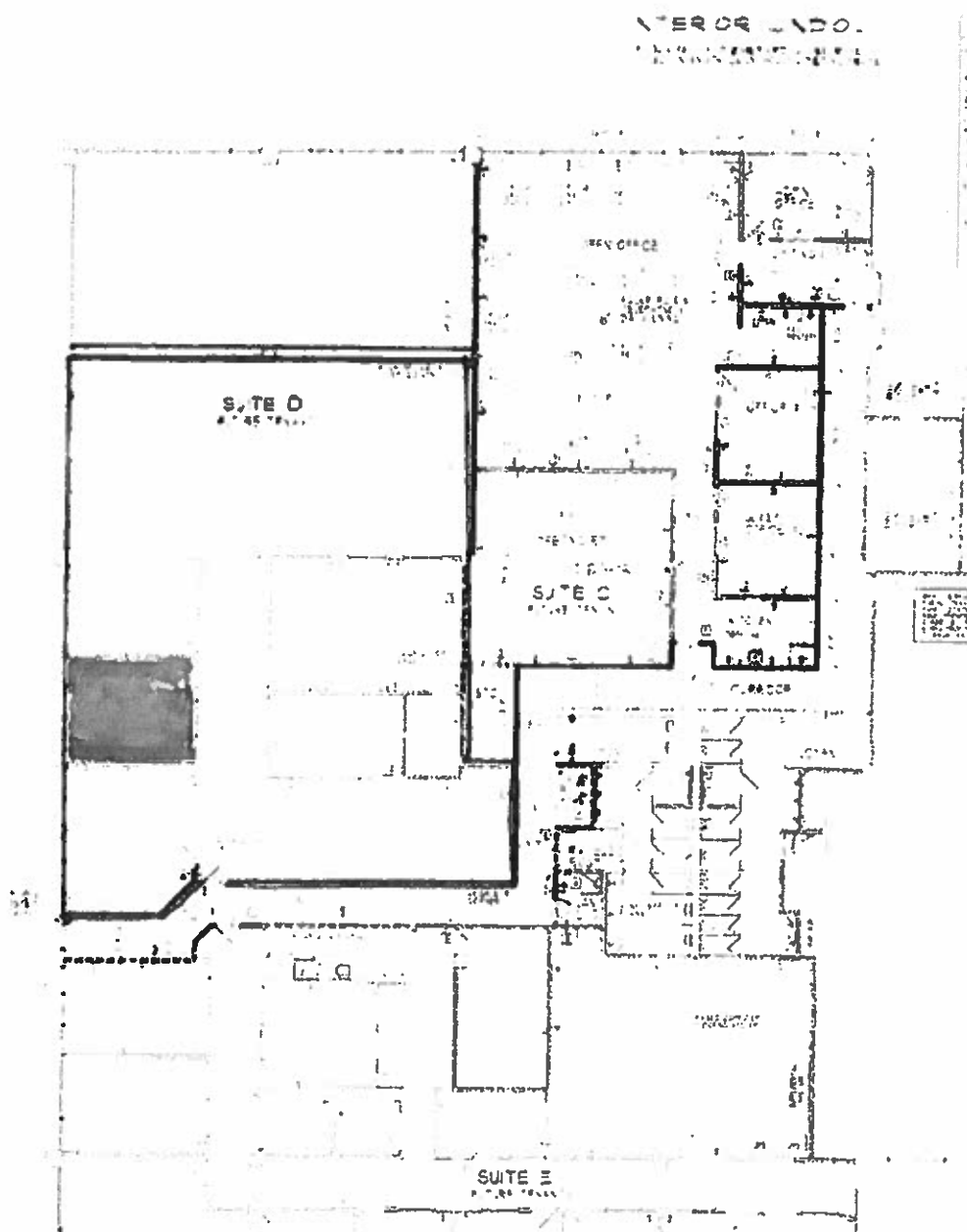
Bill Ashton, Town Manager

APPROVED AS TO FORM:


Lisa J. Yeatts, Town Attorney

January 25, 2022
(public hearing)

Exhibit A



**January 25, 2022
(public hearing)**

Resolution 22-G-11, to ratify an Extension of Sublicense pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between Town of Herndon and The Elden Street Players to extend the expiration date to June 30, 2022.

WHEREAS, the parties entered into a Sublicense Agreement dated December 28, 2020 for the use of property licensed to the Town at 750 Center Street; and

WHEREAS, the Sublicense Agreement would have expired on December 31, 2021; and

WHEREAS, Town and The Elden Street Players desired to extend the term of the Agreement to expire on June 30, 2022; and

WHEREAS, the Extension of Sublicense 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 Extension of Sublicense dated December 27, 2021 signed by the Town Manager between the Town of Herndon and The Elden Street Players in order to extend the Sublicense expiration date to June 30, 2022.

[Note: Attached for reference is the Extension of Sublicense dated December 27, 2021 signed by the Town Manager b/n the Town and The Elden Street Players in order to extend the Sublicense expiration date to June 30, 2022.]

**January 25, 2022
(public hearing)**

**Extension of Sublicense Pursuant to Ordinance 20-0-23 Continuity of
Governmental Operations**

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-0-23, as amended, this Extension of Sublicense dated December 27, 2021, hereby extends the December 31, 2021 termination date of the existing Sublicense between the Town of Herndon, a Virginia municipal corporation (Town) and The Elden Street Players (Sublicensee), dated December 28, 2020 for approximately 2,790 square foot of space located at 750 Center Street (the Sublicense) for a period of 6 months (the Extension).

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

1. The Sublicense is incorporated by reference.
2. The Sublicense shall terminate on June 30, 2022.
3. In all other respects, the Sublicense is confirmed.

TOWN OF HERNDON, VIRGINIA

THE ELDEN STREET PLAYERS

By: <u></u>	By: <u></u>
Name: <u>William H. Ashton II</u>	Name: <u>Melody Fetske</u>
Title: <u>Town Manager</u>	Title: <u>PRESIDENT</u>

APPROVED AS TO FORM

By: 

Name: Lisa J. Yeatts

Title: Town Attorney

**January 25, 2022
(public hearing)**

ADJOURNMENT

Councilmember Dhakal moved to adjourn the meeting of the January 25, 2022, public hearing at 10:26 p.m., and Vice Mayor del Aguila seconded the motion. The question was called on the motion which carried by a 5-0 roll call vote. The vote was: Councilmembers Dhakal, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Friedrichs were absent.



**Sheila A. Olem
Mayor**



**Amanda M. Kertz
Chief Deputy Town Clerk**

Minutes approved by Town Council: April 26, 2022.

**January 25, 2022
(public hearing)**

NOTE:

This page was intentionally left blank