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**HERNDON TOWN COUNCIL
Work Session
Tuesday, March 15, 2022**

At a regular meeting of the Town Council of the Town of Herndon, Virginia, held in the Herndon Police Department Community Room, 397 Herndon Parkway, Herndon, Virginia, on Tuesday, March 15, at 7:00 p.m., there were present:

- Mayor Sheila A. Olem, presiding;
- Vice Mayor Cesar del Aguila;
- Councilmember Pradip Dhakal;
- Councilmember Signe Friedrichs;
- Councilmember Sean M. Regan;
- Councilmember Jasbinder Singh; and
- Councilmember Naila Alam ~ arrived at 7:07 p.m.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Scott Robinson, Director of Public Works; Robert Tang, Director of Finance; Page Kalapasev, Director of Information Technology; Lisa Gilleran, Director of Community Development; Mike Mueller, Acting Director of Golf; Tammy Chastain, Deputy Director of Public Works; Bryce Perry, Deputy Director of Community Development; David Roscoe, Cemetery Manager; Maria Lee, Budget Manager; Robert Etris, Operations Engineer; Ahmad Zaki, Lead Planner; Dave Bracamonte, Systems Manager; and Amanda Kertz, Chief Deputy Town Clerk.

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CALL TO ORDER

1. Roll Call & Determination of Quorum

Mayor Olem called the public hearing to order at 7:00 p.m. and asked the Chief Deputy Town Clerk to call the roll for attendance. She asked each member of Council to indicate they were present. Following the roll call for attendance, Mayor Olem confirmed there was a quorum present, with Councilmember Alam having not yet arrived.

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

Request to Amend the Agenda

Vice Mayor del Aguila stated that he "would like to" amend the agenda to add Item #8 to the end of the agenda, "Outdoor Seating Discussion."

Mayor Olem stated there was a full agenda that evening, with a closed meeting following the work session.

Vice Mayor del Aguila stated he was following "Roberts Rules of Order" by making a motion to add "Item #8, Outdoor Seating."

Motion seconded by Councilmember Dhakal.

Clarification

Mayor Olem asked if the Town Manager had everything he needed to go forward with this request.

The Town Manager stated he could hear the concerns.

Vice Mayor del Aguila repeated his request to add the item to the end of the agenda.

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ANNOUNCEMENTS

Mayor Olem announced that concrete replacement work on Herndon Parkway, between Sterling Road and Crestview Drive, started yesterday. At least one travel lane would remain open, but drivers should be prepared for delays. Following the concrete work, paving was expected to begin in mid-April. This and other projects are listed on the public works page on the town's website.

COMMENTS & DISCLOSURES

Mayor Olem asked the Chief Deputy Town Clerk if there were any comments or disclosures for the record. The Chief Deputy Clerk stated that comments were provided to Council and entered into the record on item #8, Discussion of Proposed Council Pay Increase. The Clerk did not receive disclosures from Council on any item listed on the agenda that evening.

AMEND THE AGENDA

Point of Order

Mayor Olem continued, and the Town Attorney called a Point of Order that she wanted to make before starting that night's agenda.

The Town Attorney stated that there was a motion and a second to amend the agenda to add Item #8, and no vote was taken.

Councilmember Singh asked for clarification, and the Town Attorney responded, saying there was a motion to add Item #8, "Outdoor Dining," and the Council should take a vote to amend the agenda.

Vote to Amend the Agenda

The question was called on the motion, which carried by a 5-0 vote. The vote was: Councilmembers Dhakal, Friedrichs, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Regan abstaining. Councilmember Alam having not yet arrived.

Following the Council's vote, the agenda was amended to include the discussion item on "Outdoor Seating" at the end of the meeting.

Following the vote, Councilmember Regan clarified he had voted "abstain" on this item.

[Note: Councilmember Alam arrived at 7:07 p.m.]

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GENERAL

2. **Resolution 22-G-24, to authorize the submission of a Creative Communities Partnership Grant Application/Virginia Commission for the Arts.**

Mayor Olem recognized the Director of Parks and Recreation, who presented the staff report dated March 15, 2022, which is on file in the Town Clerk's office. The Virginia Commission for the Arts matches local government contributions up to \$4,500 for grants to independent arts organizations for arts activities in the locality through redistribution to nonprofit arts organizations. The program was formerly titled the Local Government Challenge Grant. To obtain grant requests, press releases announcing the program were sent to local media outlets, and nonprofit arts organizations located in the town were notified. Applications were received from NextStop Theater Company and Arts Herndon.

A citizen committee, consisting of Al Hobson, Susan Alger, and Melissa Highley Tilton, reviewed the applications. They recommended that the amount of \$4500 be awarded to Arts Herndon.

The grant matches an equal expenditure of funds for arts activities given by the town to any arts organization in the community. This is accomplished through budget allocation for arts programming. Staff recommends approval of the proposed resolution, to submit the application to the Virginia Commission for the Arts for a Creative Communities Partnership Grant in the amount of \$4,500.

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

In response to queries from Councilmember Dhakal, the Director of Parks and Recreation stated that the matching donation had to be to an arts related community organization, but it did not have to go to Arts Herndon. She discussed the donations process and how town would receive the Creative Communities Partnership grant and then redirect the funds to the recipient. She emphasized there was no financial impact to the town, as long as the town was making contributions to arts organizations.

In response to queries from Mayor Olem, the Director of Parks and Recreation indicated that the grant was also awarded to Arts Herndon last year. Because the town did not complete its donation process until recently, staff submitted the documentation, and the funds should be coming in shortly. She verified that the amount in the proposed resolution was for next year.

Councilmember Friedrichs emphasized that when the representative of the arts organization writes an application for a grant, they write it specifically for the money that is being offered. Often, the programs the arts group has offered with this grant were in partnership with the community center.

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

3. Resolution 22-G-25, to authorize the Town Manager to sign a Memorandum of Understanding with Northwest Federal Credit Union to host the Herndon Carnival.

Mayor Olem recognized the Director of Parks and Recreation, who presented the staff report dated March 15, 2022, which is on file in the Town Clerk's office. In 2019, with the planned redevelopment of the downtown, the Northwest Federal Credit Union (NWFCU) campus on the corner of Spring Street and Herndon Parkway was chosen as the site for that year's Herndon Festival, pursuant to an MOU with NWFCU. The Herndon Festival includes a carnival.

Neither the Festival nor the carnival were held in 2020 or 2021 due to the pandemic. The festival executive committee explored various options for a modified version of the Herndon Festival and carnival in 2022, which resulted in the decision to host the carnival only at the NWFCU campus. The proposed agreement outlines the responsibilities of both parties. A sponsorship agreement between the town and NWFCU would be drawn up separately.

The executive leadership and the board of NWFCU were amenable to serving as the host site for the 2022 Herndon Carnival and entering into the MOU. Staff recommends approval of the proposed resolution.

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

In response to queries about the MOU from Councilmember Singh, the Director of Parks and Recreation stated that the MOU required a certificate of insurance. She outlined the town's responsibilities, stating that NWFCU was providing the space and the town was providing all the logistics for the event. She stated there would be more than adequate space this year for the carnival.

In response to queries from Vice Mayor del Aguila about the costs, the Director of Parks and Recreation said they budgeted approximately \$300,000. It was expected that the event would at least break even, since the amount listed was meant to be for the entire Festival. Most likely, the best net to the town would be approximately \$200,000 for the carnival only.

In response to queries from Councilmember Alam, the Director of Parks and Recreation stated that there would be parking shuttles. Staff was working with the Fairfax Connector and looking at additional satellite and offsite parking locations.

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Responding to Mayor Olem, the Director of Parks and Recreation stated that previously, they had put up light towers on the W&OD Trail and she planned to do that this year.

Councilmember Friedrichs and Mayor Olem provided complimentary remarks about the event.

Following discussion amongst Council, Mayor Olem stated that this item would remain on the General portion of the agenda for next week's meeting.

4. **Resolution 22-G-26, to initiate consideration of a Comprehensive Plan Amendment, CPA #22-01, to amend Chapter 9, Transportation, of the 2030 Comprehensive Plan adopted August 12, 2008, as amended through November 17, 2020, to incorporate the Sterling Road Multimodal Improvement Project, and incorporate by reference the previously adopted Herndon Bicycle Network Master Plan and Herndon Pedestrian Plan.**

Mayor Olem recognized the Lead Planner, who presented the staff report and PowerPoint dated March 15, 2022, which are on file in the Town Clerk's office. If approved, the resolution would initiate an amendment to Chapter 9, Transportation, of the Comprehensive Plan. The amendment would incorporate the Sterling Road Multimodal Improvement Project and incorporate by reference the previously adopted Herndon Bicycle Network Master Plan and Herndon Pedestrian Plan, in accordance with the Complete Streets policy. The Lead Planner outlined the process, purpose, and description of the project, and reviewed the Bicycle Network Master Plan and Pedestrian Plan.

With the approval of an initiating resolution, the Town Council would direct the Planning Commission to prepare the amendment and hold a public hearing on the matter within 60 days, or longer, if specified by the Council. Following the Planning Commission's action at a public hearing, the amendment and Commission's recommendation would be considered by the Town Council at public hearing. 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 Councilmembers Regan, Dhakal, and Singh about specifics of the plan, the Lead Planner indicated that the design specifics would be reviewed for approval after the Planning Commission's review. He clarified that staff was not talking about reducing travel lanes on the street.

In response to queries from Councilmember Singh about the funding, the Lead Planner stated that the Complete Streets concept is popular and incorporating it could support the chances for external funding.

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Councilmember Friedrichs and Mayor Olem expressed their excitement for this project.

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

DISCUSSION

5. Water Rate Study Presentation - Raftelis Financial Consultants, Inc.

Mayor Olem recognized the Director of Public Works, who introduced the consultants, Bart Kreps and Vanessa Waller, from Raftelis Financial. During this budget cycle, staff asked the consultants to analyze the water and sewer fund and provide rate recommendations. He recognized Mr. Kreps for the presentation.

Mr. Kreps presented the PowerPoint titled "Water & Wastewater Rate Study: Preliminary Results," dated March 15, 2022 and provided an overview of the rate results from the study. He reviewed the objectives of the study, the financial forecast and key assumptions, along with the potential rate scenarios. Rate increases would be driven by rising costs and inflation, and the study had a three percent escalation built into the cost over five years. He expected availability fees to remain relatively constant over the course of the forecast period.

Mr. Kreps outlined the rate scenarios, which included the current rate structure; alternative rate structure; and proposed rates. Based on the existing rates, the town was not covering its O&M, debt, or capital, meaning the town would have to draw on reserves. He stated that was not sustainable over time. To fund the town's CIP, Mr. Kreps proposed some rate increases over the next several years, as outlined in the PowerPoint. He reviewed a chart comparing Herndon's rate to nearby localities, pointing out that Herndon was on the low end of rate charges. The options he outlined would help address that over time through the proposed increases and would be designed to be revenue neutral. Mr. Kreps discussed the average impact to town customers for both water and sewer.

Moving forward, Mr. Kreps stated that the Council would need to select their preferred rate increase scenario and revise the financial plan if necessary. He and the consultants were continuing to review the town's availability fees, which they would bring to the Council, along with documentation related to the rate study.

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

Councilmember Singh reviewed concerns he had with the rate study, its estimates, and assumptions. He would provide the Town Manager with his detailed comments about the rate study.

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There was a brief question and answer session between Councilmember Dhakal, the Town Manager, and Mr. Krebs.

Responding to queries from Councilmember Dhakal, the Town Manager stated that there was a rate study done in 2018. Following that study, they had programmed in a five percent increase per year. However, the town had to pause raising rates because of the pandemic. Additionally, the town was faced with a three percent increase in commodity charges. He reviewed how the town could use ARPA funding for some of its water and sewer projects. The water and sewer projects represented about 20 percent of the ARPA funds.

In response to Councilmember Dhakal's comments about the ARPA funding, the Director of Public Works stated that even if the town were to take half of the total ARPA funding available, it would not make a large impact on the proposed \$60 million capital program over the next five years. It would not change the inevitable need to raise rates to cover the costs.

In response to queries from Councilmember Dhakal about the town's rates versus the local and national averages, Mr. Krebs stated they were in the middle.

The Town Manager reviewed some of the requirements for bonding and how that would impact borrowing money in the future. He agreed that the town was already behind in covering its operating expenses.

Councilmember Dhakal thought there was some catch-up to do in the rates and he appreciated the comparison in the PowerPoint between the cost of Herndon water versus bottled.

There was a brief question and answer session between Vice Mayor del Aguila, the Town Manager, and Mr. Krebs.

In response to queries from Vice Mayor del Aguila, Mr. Krebs stated that during COVID, demand for water shifted slightly from commercial to residential, but overall, it depended on the location and who you served. The per capita decline in consumption was a trend observed over the past 10-15 years. He reviewed the town's debt levels and indicated that the proposed rates were good targets. He was most concerned about counting on availability fees and rather increasing the revenue from user charges to support the system.

Vice Mayor del Aguila asked for five years of historical data, and Mr. Krebs stated they could bring in historical data for analysis. He had started at the current year in the PowerPoint because this was a forward-looking presentation.

Vice Mayor del Aguila stated his assumption was that the town had not kept up with rates and cost for much longer than the past few years.

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Responding to Vice Mayor del Aguila's request to explain the wholesale cost difference between the town and Fairfax County, Mr. Krebs stated that because of economies of scale, it did not make sense to him that a large company, Fairfax Water, could charge higher rates than the town, which was significantly smaller. He reviewed scenario one's proposed rates, as provided in the PowerPoint, and stated it was sequenced over a five-year period. He further discussed the national survey results provided in the presentation.

In response to queries from Councilmember Regan about how the town compared to Fairfax Water, Mr. Krebs explained that the latter had more customers over which it could spread the cost.

Councilmember Friedrichs provided comments about the rate structure and how she thought that the town was charging too little at the current rates. She did not want to raise the rates beyond covering the town's costs.

Mayor Olem mentioned how residents were using less water, and how some of that was due to the popularity of high efficiency appliances. She stated that she enjoyed this discussion.

Councilmember Singh wanted to compare the town's rates to Fairfax County's rate increases. He thought the rates should be based on additional costs, but he did not think the town should look at other localities in setting its rates. He thought the town should have the developers pay the connection fees, which would be a separate conversation. He discussed his concerns about the presentation.

The Town Manager agreed with the comment that the town should not set its rates based on other localities.

Mayor Olem asked that, if they were going to look at historical data, would that include factors like improvements to water quality that have led to increased costs.

Mr. Krebs discussed why costs have increased in the past several years. He agreed that some of it was because water quality is highly regulated, which they would likely continue to observe.

In response to queries from Councilmember Friedrichs, Mr. Krebs agreed that availability fees were what builders would pay to connect.

The Town Manager stated the difficulty with availability fees was they could not know when the developers would apply for building permits, which triggers those fees. He would like to look at the process and charges for availability fees. This would be included in the next series of water and sewer analysis.

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Responding to queries from Mayor Olem, the Town Manager stated that rate fees discussed this evening would be included as part of the FY 23 budget, which would go to print soon. He would be relying heavily on the plan presented that evening for his recommendations.

6. FY 2023 Enterprise Fund Budget Presentation – Director of Finance.

Mayor Olem recognized the Director of Finance, who presented a PowerPoint presentation titled “Enterprise Funds Budget Discussion,” dated March 15, 2022. He provided an overview of the three enterprise funds, which were: Water and Sewer Fund; Herndon Centennial Golf Course Fund; and Chestnut Grove Cemetery Fund. Enterprise funds are self-supported by revenue.

The Director of Finance discussed the status of the Water and Sewer Fund, which included upcoming projects and the rates, which were reviewed during the previous item. He then discussed the Golf Course Fund, which had received strong revenues this past year because of high demand. The demand for Chestnut Grove Cemetery had risen, however, unknown post-pandemic demand and the impending deficit of available burial sites had made future projections challenging.

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

There was a brief question and answer session between Councilmember Friedrichs, the Acting Director of Golf, Director of Finance, and Town Manager about the Golf Course fees.

There was a brief question and answer session between Councilmember Regan, the Acting Director of Golf, and Director of Finance about the town resident rates at the Golf Course.

Responding to queries from Councilmember Regan, the Town Manager stated they could look at the rate structure and a larger discount for town residents. There was a brief question and answer session between Councilmember Dhakal, the Director of Finance, and Town Manager about the Golf Course and cemetery rates.

Vice Mayor del Aguila observed that Herndon seems to be charging the lowest compared to other jurisdictions. While he thought that was good and they were not out to make a profit, he wanted to bring in enough revenue to cover expenditures. He did not know what the correct number was, but he would not mind being in the middle. He would support raising the Golf Course rates, while giving a discount to town residents.

Councilmember Friedrichs asked Vice Mayor del Aguila if he thought they should look at raising Golf Course rates now, or should they wait until some of the

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capital projects were done. Vice del Aguila thought they could “sell that improvement” by highlighting the projects on the course, like the landscaping and greens.

Councilmember Singh said he had talked with the former Director of Golf, who advised him it was difficult to attract new customers. Councilmember Singh did not think the value of the land was not reflected in the rates, since the Golf Course was barely covering its costs. He had also heard that the cemetery rates were becoming unreasonable.

In response to queries from Councilmember Singh, the Town Manager stated that staff could provide a copy of the analysis of other cemeteries in the area. He discussed how the Golf Course Fund operated related to the general fund. He thought there was some room to maneuver the Golf Course rates, but there were challenges in demand and with the use of the Golf Now app.

The Town Manager recognized the Acting Director of Golf, who stated that they were sold out of tee times on most weekends and many golfers booked through the Golf Now app. He explained some of the strategic investments he wanted to make into the course.

In response to queries from Vice Mayor del Aguila, the Acting Director of Golf stated he thought the town’s course was unique in comparison to other nearby courses. He briefly discussed the master plan and debt service for the golf course.

The Town Manager gave kudos to the Acting Director of Golf for his dedication to making sure the Golf Course was able to operate consistently, even following bad weather conditions.

Vice Mayor del Aguila thought the fees were still too low for the value of the golf Course, and the Acting Director of Golf explained how he wanted to increase fees incrementally.

The Director of Finance stated that a 10 percent increase right now would help cover the Golf Course’s operating expenditures while helping to fund future capital projects.

Mayor Olem emphasized the positive environmental impacts of the course, including that it was an Audubon Sanctuary. The Town Manager agreed, stating that they used environmentally sound materials on the course.

There was further brief discussion amongst Council and staff on this topic.

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7. **Clarification on the handling and dissemination of privileged and otherwise confidential information.**

Mayor Olem recognized Councilmember Regan, who discussed the nature of attorney-client privileged information. He indicated that he and Councilmember Friedrichs thought they should discuss sharing this type of information. When it was one attorney and seven individuals on Council, they thought it was important that there was a shared expectation of what would happen to that kind of information. He was not aware of protocol or expectation surrounding this issue.

They wanted to pose questions to Council, to see if there was a consensus on when or how to share attorney-client privileged information. For example, Councilmember Regan asked if sharing information would be done by majority vote, or, would all seven members have to agree to share it. He also asked the Council what kind of information would be shared ~ would it be all the information discussed, or he asked if it should be limited.

Councilmember Friedrichs thought a key issue was being surprised by information being released that they expected to be confidential. She thought this gave a feeling of insecurity, which would make it difficult to share information. The legality of the information was one issue, but she said it was also important to have a consensus about how confidential information was managed.

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

Vice Mayor del Aguila stated it was his understanding that none of the privileged information could be shared outside of a closed meeting.

Councilmember Regan stated he also wanted to consider privileged information, not only closed meeting discussions.

Vice Mayor del Aguila thought they should never disclose personnel information. He thought the Council could vote in the future to release closed meeting information. He stated if something was marked confidential, or was stated in a closed meeting, it was confidential, unless one of them "went rouge" and shared the information.

Responding to the discussion, the Town Attorney stated that the attorney-client privilege exists between the Town Attorney and the seven Councilmembers as a body. It would take a least the majority of Council to waive that privilege because it was held by the whole. There were other types of information, like what is prepared for closed meetings, which was confidential by the Code of Virginia, and was not a legal privilege. Those are the things they could vote on to release. She was not aware of any rules in the Town Charter or the Council's code of ethics that specifically addressed expectations for the attorney-client privilege or confidential information.

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Councilmember Regan asked about legal precedent for the Council voting to release confidential information.

In response to Councilmember Regan, the Town Attorney stated that she could brief the Council on the subject, but generally, it would take the majority of Council to waive the attorney-client privilege.

There was a brief question and answer session between the Town Attorney and Councilmember Friedrichs about the parameters of attorney-client privileged information. Councilmember Friedrichs thought it was important to consider the reason the Town Attorney marked information confidential. She thought the body should discuss how they wanted to address releasing confidential information.

Councilmember Singh provided comments about the nature of confidential information and what type of information could be shared. He did not understand why information had to be confidential and he thought there was much debate amongst attorneys on the issue. He thought it depended on your interpretation of the law.

There was a brief exchange between Councilmembers Singh and Friedrichs about confidential information.

Councilmember Singh stated the expectation was that confidential information would be kept that way. Councilmember Friedrichs stated that was why they wanted to discuss this issue, to see what the shared expectation was.

Responding to the discussion, the Town Attorney emphasized that this was not an individual privilege, but it was for the entire legislative body. This was specific to local governments. She also said that typically, the majority rules with the governing body.

Councilmember Dhakal discussed the Town Attorney's dispatch and when documents were marked confidential. He wondered about the process for sharing confidential information and asked if this were something the Council could discuss at a meeting.

Councilmember Friedrichs did not think this would be used often. She thought it would not be too much to have a Councilmember check with the rest of Council on that rare occasion when someone wanted to share privileged information.

Responding to Councilmember Dhakal about waiving the attorney-client privilege and potential recourse, the Town Attorney indicated this would be up to the body to decide.

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Councilmember Regan asked the Town Attorney for more information about using a majority vote to release privileged information. He said that while the Town Attorney was gathering information, the Council should agree to not release privileged information.

Mayor Olem wanted the Council to decide as a group with the input of the Town Attorney, rather than going out and seeking individual legal opinions.

Vice Mayor del Aguila stated that no one Councilmember could make a unilateral decision. The recourse was "majority rule" and he emphasized that when he saw something was confidential, he kept it that way. He suggested that they look at the process that way.

Councilmember Friedrichs thought that the Council should develop the process and vote on it.

Councilmember Singh discussed outcomes for releasing privileged information.

The Town Attorney stated that if an individual disagreed with marking something confidential, that did not mean they could release the information and waive the privilege for everyone else. There was no automatic course of action if someone released confidential information.

There was discussion amongst Council about the handling of privileged information.

Councilmember Friedrichs stated that she would like to see the Council consult one other first before releasing privileged information.

Councilmember Singh said, "anybody here amongst us must take great pains to make sure the privilege is kept. But, then there are other cases when a person feels they can be...(inaudible)...they could come and consult you, but you can always say no...(inaudible)...the majority does not have to go along with the person, but he should have the right, without any fear to be able to disclose any information."

Councilmember Regan did not think Councilmember Singh was correct about disclosing information. He understood the Town Attorney to have said that "any individual does not have that right" to share confidential information on their own. He also echoed Vice Mayor del Aguila's earlier comments that individuals do not have the right to act unilaterally. He understood that Councilmember Singh may not agree, but he thought the other members of Council agreed.

There was a brief exchange between Councilmembers Singh, Friedrichs, Regan, and Vice Mayor del Aguila about sharing information and potential consequences.

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Councilmember Singh stated that in most instances he respects the privilege. However, "in those instances where your conscience doesn't allow you...(inaudible)...I'm sure that there is a way to do that."

Councilmember Dhakal stated he would agree with the majority system, and he thought they needed more discussion on how that process would work. He asked how a process would work if someone did not agree with the confidential information.

Councilmember Friedrichs discussed how a Councilmember could consult and address the body if they did not agree with information that was presented.

Councilmember Singh stated that he would be happy to discuss, but "at the end of the day, I have to...(inaudible)...with my conscience. And I may decide to...do whatever I want to do." He thought it had been a good discussion, but he stated that he would still dissent.

Mayor Olem encouraged members of Council to look at the information that the Virginia Municipal League (VML) offered on this and similar topics.

Following discussion, the Town Attorney asked Council to clarify what they were asking her to research. She heard a request for information on what process other bodies followed in addressing attorney-client privilege. She asked if this was still the request, or had the Council discussed it.

Councilmember Regan thought they had discussed the matter.

Councilmember Dhakal asked what the expectation was going forward if the matter had been fully discussed.

Councilmember Singh did not think they needed any follow-up because they understood the process.

Councilmember Friedrichs thought they had done the follow-up through their discussion.

Councilmember Regan understood that the majority accepted that "the advice was given to the body, not the seven individuals, and that no individual has the right to violate that privilege without the permission of the body. If an individual violates that, then it's the body's job to enact a remedy on the individual."

Vice Mayor del Aguila followed up by saying, "if there's a majority."

Councilmember Dhakal asked if they could amend the code of conduct and put this point on it.

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Mayor Olem stated the code of conduct was on the website and that it was more about ethics. She suggested that everyone review it.

Councilmember Singh asked what he could do when “the wrong information was given” at a closed meeting.

Mayor Olem stated that she was hearing accusations. She did not agree with what was being said.

Councilmember Singh stated he authored several articles and again asked what he could do about information he believed was wrong.

Councilmember Regan stated that was not part of this discussion. They had just discussed privileged information, had a good discussion, and he thought they had a shared understanding of the topic. They were not talking about closed door meetings.

Mayor Olem asked if the Council was ready to move on, and several members of Council agreed. With the concurrence of the majority of Council, Mayor Olem moved to the next discussion item.

8. Outdoor Seating

Mayor Olem recognized Vice Mayor del Aguila since he asked to add this item to the agenda.

Vice Mayor del Aguila stated he asked to have this item put on the agenda before and he had not heard any objections.

Mayor Olem stated that staff had been working on this issue, but no proposals had come in, and the town was not currently in a state of emergency.

Vice Mayor del Aguila said the “rumor mill” was that the town was not doing outdoor seating, and the Town Manager replied that they had not made that policy statement.

Vice Mayor del Aguila asked about different levels of seating he wanted to address; what has to be done; what was the target date for outdoor seating; and suggested they work backward from there. He thought the town could roll out a few features of outdoor dining as “MVPs” first.

Mayor Olem referenced the outdoor seating with umbrellas on Town Hall square.

Vice Mayor del Aguila asked to discuss “what do we need to do, (and) when are we targeting to have businesses leverage outdoor seating like we did during the pandemic.”

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The Town Manager stated that businesses had different requirements and processes depending on whether they were on private or public land. There were three major areas where there could be issues with outdoor dining, which were: zoning; parking; and downtown shared parking. He discussed safety issues and ADA compliance, along with current state ABC laws that had been relaxed during the pandemic's state of emergency. There were also state law restrictions on public property, including the right-of-way.

The Town Manager reviewed a few other considerations, like that the town's concrete barriers were used as barricades during the pandemic; implications for when downtown redevelopment was underway; and that parking was already at a premium in the downtown. Another matter was the eminent domain legislation that had passed the Virginia General Assembly, which would give businesses a lot more latitude to make up for lost revenue, even with short term governmental takings. He stated the Economic Development Manager was going to reach out to businesses on this topic.

In response to queries from Vice Mayor del Aguila, the Town Manager suggested that businesses apply for the smallest footprint possible in requesting outdoor dining.

Vice Mayor del Aguila asked what assistance was needed and what could they do to expediate outdoor dining by May 1.

Responding to Vice Mayor del Aguila, the Town Manager stated he did not need anything from Council at this point. He pointed out that the same staff who would be working on this item were already working on several other important items. He stated staff could work on outdoor dining and asked Council to give staff the opportunity to address the associated challenges. He also stated that the businesses have to be willing to put up an investment.

In response to queries from Councilmember Regan, the Town Manager indicated he was thinking about leasing public property for outdoor dining. Staff would have to work on the leasing aspects, safety, and ADA compliance.

Mayor Olem indicated that she spoke with one of the downtown property owners about parking areas and outdoor dining. They advised her that one of their tenants was interested in doing something like this in their personal parking area.

Responding to the discussion, the Town Manager emphasized that all businesses are different. He said that there may be commonalities, but he could see three or four different scenarios based on several variables.

Vice Mayor del Aguila shared comments about outdoor dining bringing business to the downtown.

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Echoing Vice Mayor del Aguila's comments, Councilmember Dhakal had also heard public support for outdoor dining, particularly through his Facebook page. He understood the complications, but he thought it could be rolled out in stages and the risks could be mitigated.

There was further discussion amongst Council about downtown businesses and outdoor dining.

In response to queries from Councilmember Friedrichs about the ABC laws, the Town Manager stated the town was concerned about them because it was part of the zoning approval process. The town could not assign an appropriateness that would violate state law.

The Town Manager recognized the Director of Community Development for comments, and she confirmed that the town could not go forward with a zoning regulation that would conflict with state law. She was not saying it could not be done, but it could present a zoning enforcement issue.

Councilmember Singh provided comments on outdoor dining and the various factors he thought needed to be thoroughly explained. He thought the statement of the problem needed to be provided first to fully understand the issues. He would like to have brief descriptions of the situations staff was discussing.

Councilmember Dhakal discussed possible "MVPs" and asked if the town could issue conditional approvals for outdoor dining without alcohol licenses, so restaurants could sell food. The ABC process could be followed after that.

Responding to Councilmember Dhakal's comments, the Town Manager stated that the town enforces conditional approvals. Also, the town usually adds conditions that are under the town's control rather than an external entity like ABC. He also said the town would not approve something that would be denied by another entity.

Vice Mayor del Aguila thought a sign requirement prohibiting alcohol beyond a certain point until the town could change it would help address the problem. The Town Manager responded that would be an ABC question.

The Town Manager stated he would like to do more research on this topic to make sure the town was not boxing itself into a corner.

There was further brief discussion amongst Council and staff.

Responding to additional discussion, the Town Manager stated he could work with the Economic Development Manager to look at different outdoor dining scenarios for the Council.

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Vice Mayor del Aguila asked for an update on this item at next week's meeting in the public forum.

ROUNDTABLE

1. Vice Mayor del Aguila:

Dais Seating Arrangements

Recalled that the majority of Council wanted to be seated at the dais "according to election vote totals." He had noticed they were no longer seated that way. He asked to "make sure that happens."

Responding to Vice Mayor del Aguila's request, Mayor Olem explained that the mayor decided the seats. She had spoken with individual Councilmembers about their seating preferences prior to resuming in-person public meetings.

Vice Mayor del Aguila stated that "the majority rules."

Councilmember Friedrichs stated Council had not voted on this matter, to which Vice Mayor del Aguila responded and asked to take a vote on it.

Mayor Olem stated that Council was in a work session, and they were ready to go on with Roundtable.

Vice Mayor del Aguila stated "the majority wants an unobjective, completely dispassionate seating by vote totals, just like we did before."

Responding to Councilmember Friedrichs' query, Vice Mayor del Aguila stated the Council had sat this way during the last term.

Mayor Olem replied that the mayor set the seating.

Vice Mayor del Aguila said that the Town Attorney told him it was a majority vote, and that the mayor does not have the unilateral authority to decide anything.

Mayor Olem said she had also spoken with the previous mayor.

Vice Mayor del Aguila indicated the previous mayor "capitulated to the majority rules." He asked town staff to seat the Council by vote totals like they had done before.

Councilmember Singh asked the Town Attorney to weigh in on the discussion.

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The Town Attorney opined that the Town Clerk could provide the Council with information previously compiled on the topic. She stated the seating arrangements were generally viewed as a "procedural meeting matter" over which the mayor has authority.

Vice Mayor del Aguila said that the Town Attorney advised him the opposite way before.

Replying to Vice Mayor del Aguila, the Town Attorney said she could review her previous response if it was in writing.

Responding to Vice Mayor del Aguila, the Town Attorney stated that the previous mayor decided to use vote totals for seating.

Vice Mayor del Aguila stated it was "a majority vote," to which the Town Attorney replied she did not think there had been a vote.

The Town Attorney stated there was research provided to Council before on this. It was considered the mayor's discretion to determine the seating.

Vice Mayor del Aguila asked the Town Attorney where this was defined.

Responding to Vice Mayor del Aguila, the Town Attorney stated that it was not defined, it was in the research the Town Clerk provided to a previous Council. She thought this information may inform the Council, and then they could decide how they wanted to manage it.

Following an exchange between Mayor Olem and Vice Mayor del Aguila, the Town Attorney stated she was detecting a difference of opinion.

Vice Mayor del Aguila said, "I heard that the majority rules."

Councilmember Singh said that if it was written somewhere that the mayor has the discretion over seating, then the mayor has it like other procedural matters. If this were just a matter of practice, the Council could go with the majority vote.

Councilmember Friedrichs asked to move forward with the agenda.

Vice Mayor del Aguila asked if the Council wanted to be seated by vote totals, to which Councilmember Friedrichs indicated it did not matter to her.

Councilmember Singh indicated it would not matter to him where he sat. He stated that the mayor was gracious to have him sit where he was, but if it would please the majority of Council, he could move to the end without a problem.

Councilmember Friedrichs asked if the Council could vote on this.

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Councilmember Singh wanted to hear the Town Attorney's guidance on this subject.

Mayor Olem asked if the Council could move forward with Roundtable. She stated this vote would need to take place in a public forum for the community to observe.

Vice Mayor del Aguila stated the Council could take direction at work sessions.

Councilmember Friedrichs stated that according to Roberts Rules of Order, which the Council voted on, the mayor runs the meeting.

[Additional discussion on this topic by Councilmember Dhakal later in the meeting during Roundtable.]

2. Councilmember Singh:

Various

Town Council Strategic Planning Initiatives Meeting

Councilmember Singh discussed the upcoming meeting and asked if the Council could meet with the "mediators" ahead of time to set the ground rules.

It was Councilmember Singh's opinion that approved initiatives were "not being implemented in good faith" and he asked to discuss his concern further.

Closed Meeting Information

Councilmember Singh intended to approach each member of Council to discuss matters that had been reviewed in a recent closed meeting. After he did that, he indicated he may request an additional closed meeting.

Ashwell Property

Councilmember Singh discussed what had been done so far at the Ashwell property in the downtown. He was concerned that the main concrete pad had not been removed and that the contaminated soil was not being dealt with properly.

The Town Manager asked if Councilmember Singh's comments were his speculation, to which he said, "I am making my reasoned judgement."

The Town Manager provided an update on what had recently occurred with the downtown redevelopment project and confirmed there was an environmental remediation agreement as part of the project.

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There was further discussion amongst Councilmember Singh and the Town Manager on this property and the downtown redevelopment project.

Councilmember Singh asked for the project's schedule and stated that individuals were complaining to him about it.

3. Councilmember Dhakal:

Dais Seating Arrangements

Councilmember Dhakal stated that Vice Mayor del Aguila asked the question about dais seating to establish a process. He stated that setting the process was what mattered to him more than where he was going to sit. He asked to make the process more predictable, even if it was "de facto."

The Town Manager stated the process was between the Town Clerk and the mayor for as long as he could remember. He had not been involved in the process until 2018, when this came up at a Town Council meeting. Following further comments, he stated that staff would follow what the Council wanted to do in establishing a process for seating.

Vice Mayor del Aguila stated that using the vote total takes personal preference out of setting the seats. He thought the seating should be done by numbers only.

Councilmember Dhakal stated he mentioned this because he thought the idea was being rejected before it was discussed.

4. Councilmember Regan: No comments.

5. Councilmember Friedrichs: No comments.

6. Councilmember Alam: Asked for updates on the DMV and early voting.

7. Mayor Olem: Provided personal remarks about the HPD Annual Awards Recognition and Dinner that was held that past Saturday.

COMMENTS FROM THE TOWN MANAGER

Massage Therapy – Business License Fees

The Town Manager discussed the business license fees for massage therapists and stated that staff received 21 appeals so far. The first letter of determination addressing the appeals would be sent out soon.

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Replying to the Town Manager, the Director of Finance said he should have the letters out by the end of that week.

The Town Manager stated that staff wanted to make sure the legal language was correct before they sent the letters, which they were working on individually. He stated staff was drafting a proposed ordinance for FY 23 that would be part of the budget packet. When the Council acts on the budget, it would include changes to the part of the ordinance that dealt with massage therapy.

Downtown Redevelopment

The Town Manager provided an update on the downtown redevelopment. Comstock was working with their banks on their lending package. The town was involved in it through the tri-party agreement that protected the town. He and the Town Attorney would be working on the lending package in the coming weeks. Comstock also put out some bid updates that should be back soon.

The Town Manager shared that the town issued Comstock the building permits for all the buildings.

Regarding transitional parking, the town was under lease for 80 spaces at Roberts Carpets and had agreed on terms for 80 spaces at the El Calvario Church. Additionally, Arts Herndon was going forward with the temporary move to 397 Herndon Parkway. He stated that town staff was meeting with Comstock about these various items on Thursday.

Town Council Strategic Planning Initiatives Meeting

The Town Manager stated he met with the moderators for the upcoming Town Council Strategic Planning Initiatives meeting and they were well-versed on what had occurred with these meetings. They had received all the documentation that had been part of the previous meetings and he would be meeting with them soon to discuss how to proceed.

Point of Order

Mayor Olem stated that the Council had a need to go into a closed meeting.

Vice Mayor del Aguila called for a Point of Order and stated he had several questions for the Town Manager.

Mayor Olem stated that was not a Point of Order.

The Town Manager replied that, in all fairness, he had not asked if anyone had questions on his updates.

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Questions of the Town Manager

Vice Mayor del Aguila asked if the moderators have all the information that they need for the upcoming Town Council Strategic Planning Initiatives Meeting.

The Town Manager indicated he had provided all the materials he had from the previous meetings to the moderators. He asked that Council send him any new items so he could get those to the moderators. He had advised the moderators that there might be new initiatives coming.

Vice Mayor del Aguila asked the Town Manager if he had everything he needed for the outdoor seating item.

The Town Manager responded that he had everything he needed from the Council on outdoor seating.

Vice Mayor del Aguila asked the Town Manager if he had the directive from the Council to set the dais seating arrangements by vote total.

The Town Manager stated that he did not know if he did, and Vice Mayor del Aguila responded that he wanted to ask Council one final time. He stated he was in favor of it.

Mayor Olem stated the Council had the need to go into a closed meeting and asked if there was a motion to do so.

Councilmember Dhakal stated there was still a question pending.

Vice Mayor del Aguila asked if that was a second, to which Councilmember Dhakal raised his hand.

Councilmember Friedrichs asked if they could finish this matter.

Mayor Olem called for a motion to go into closed meeting.

Vice Mayor del Aguila stated that Councilmember Dhakal had seconded his suggestion.

Mayor Olem stated they could vote on this matter at the next public meeting.

Vice Mayor del Aguila stated they could take direction at work sessions.

Mayor Olem reiterated the need to go into a closed meeting, and she asked if the Council wanted to go into the closed meeting or if they wanted to adjourn.

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Point of Order

Vice Mayor del Aguila called for a Point of Order and asked the Town Attorney if the Council “suggests and takes direction at work sessions.”

Responding to Vice Mayor del Aguila, the Town Attorney stated that the Council does not typically take votes at work sessions.

Vice Mayor del Aguila asked how they would move forward, and the Town Attorney suggested he could ask the Town Manager to put this on the next Town Council public meeting agenda.

Vice Mayor del Aguila stated he thought there were four members of Council that wanted to do this.

Councilmember Singh offered a “friendly motion” to wait another week, and vote on this matter at the public meeting on March 22, 2022.

CLOSED MEETING

Mayor Olem stated that the Council had a need to go into a closed meeting and that the appropriate meeting notices were provided in accordance with state law. The Closed Meeting was held in the Herndon Police Department Community Room, 397 Herndon Parkway, Herndon, Virginia.

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal, and carried by unanimous roll call vote, the Herndon Town Council went into Closed Meeting at 10:30 p.m. under:

- Section 2.2-3711(A)(1) of the Code of Virginia, to discuss the performance of certain specific current and former Herndon Police Department employees; and
- Section 2.2-3711(A)(8) of the Code of Virginia, for consultation with legal counsel regarding specific pending legal matters.

Vote: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting “Aye.”

RECESS

At 10:30 p.m. Mayor Olem called a brief recess, and at 10:40 p.m., the closed meeting reconvened Herndon Police Department Community Room, all members present, and with Mayor Olem presiding.

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CLOSED MEETING (CONTINUED)

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal, and carried by unanimous vote, the Herndon Town Council reconvened in public session at 11:19 p.m.

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

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal, and carried by unanimous vote, the Herndon Town Council approved the following Certification of Closed Meeting.

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

Certification of Closed Meeting

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

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

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed, or considered by the Town Council.

VOTE:

Ayes – 7

Nays – 0

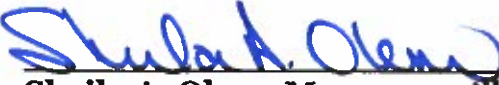
ABSENT DURING VOTE: 0

ABSENT DURING MEETING: 0

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ADJOURNMENT

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal, and carried by unanimous vote, the meeting of the March 15, 2022 work session was adjourned at 11:21 p.m. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."


Sheila A. Olem, Mayor


Amanda M. Kertz
Chief Deputy Town Clerk



Minutes approved by Town Council: June 14, 2022

**March 15, 2022
(work session)**

NOTE:

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