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HERNDON TOWN COUNCIL

**Tuesday
April 26, 2022**

The Town Council met in public session on Tuesday, April 26, 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 Naila Alam, Pradip Dhakal; Signe Friedrichs; Sean M. Regan; and Jasbinder Singh.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Scott Robinson, Director of Public Works; Robert Tang, Director of Finance; Viki Wellershaus, Town Clerk; Page Kalapasev, Director of Information Technology; Elizabeth Gilleran, Director of Community Development; Cindy Roeder, Director of Parks and Recreation; Laurie Sigler, Deputy Town Attorney; Maria Lee, Budget Manager; David Stromberg, Zoning Administrator; Dennis Holste, Economic Development Manager; Dave Bracamonte, Systems Manager; and Amanda E.M. Kertz, Chief Deputy Town Clerk.

PLEDGE & CALL TO ORDER

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

Mayor Olem asked Council and those participating 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, 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.

**April 26, 2022
(public hearing)**

APPROVAL OF MINUTES

**Vote on January 11, 2022
Town Council Public Hearing Minutes**

On motion of Councilmember Friedrichs, seconded by Councilmember Regan, and carried by unanimous a 6-0 vote, the minutes of the January 11, 2022, Town Council Public Hearing were approved. The vote was: Councilmembers Alam, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Dhakal abstaining from the vote.

**Vote on January 18, 2022
Town Council Work Session Minutes**

On motion of Councilmember Regan, seconded by Councilmember Friedrichs, and carried by a 5-0 roll call vote, the minutes of the January 18, 2022, Town Council Work Session were approved. The vote was: Councilmembers, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Alam and Dhakal abstaining from the vote.

**Vote on January 25, 2022
Town Council Public Hearing Minutes**

On motion of Councilmember Dhakal, seconded by Councilmember Singh, and carried by unanimous a 6-0 vote, the minutes of the January 25, 2022, Town Council Public Hearing were approved. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam abstaining from the vote.

ANNOUNCEMENTS

Mayor Olem stated the Herndon Farmers' Market would open for the season on Thursday, April 28, on Lynn Street, from 8:00 a.m. to 12:30 p.m. It featured produce, baked goods, flowers and more.

Mayor Olem was excited to host once again the 36th Annual Mayor's Volunteer Appreciation Reception on Sunday, May 1, at the Herndon Community Center. The program would be modified because many were still concerned about COVID, but it would still be a great event to recognize community volunteers.

Mayor Olem stated that the town's Department of Public Works (DPW) would host its annual Big Truck Days on Thursday, May 5 and Friday, May 6 at the Town Shop on Sterling Road. The event was free, she encouraged all those interested to attend, and to bring non-perishable food donations.

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Mayor Olem stated that Bike to Workday was on Friday, May 20. Herndon's pitstop was at the Town Hall green, and it would be open in the morning and afternoon, from 5:30 to 10:00 a.m., and from 4:30 to 6:00 p.m. She encouraged those interested to register early to receive a t-shirt. More information on these events was on the town's website.

3. COMMENTS FROM THE TOWN MANAGER

Mayor Olem recognized William H. Ashton II, Town Manager, for comments.

Mr. Ashton stated that he received an update from the Fairfax County Health Director earlier that day, which stated that COVID cases were up 62 percent in the county. However, hospitalizations were still low. There was no change to the town's posture on COVID. He stated the new variant was highly transmissible and encouraged everyone to take good care of their health.

Mr. Ashton stated that for those in the Council Chambers, the large projector bulb had gone out. Staff had placed a monitor at the front of the room, and the light for the projector was on order and should be in next week.

4. COMMENTS FROM THE TOWN COUNCIL

Councilmember Alam: Stated that the month of Ramadan started on April 2, lasting 30 days. During that time, she would be leaving the Council meetings briefly to break her fast.

Councilmember Alam thanked the Council, residents, and staff for their well wishes for her sister.

Councilmember Dhakal: Wished Councilmember Alam and all those in the Muslim community who observe a Happy Ramadan.

Councilmember Dhakal enjoyed attending the 60th Anniversary of Herndon Elementary School (HES) with Mayor Olem and Councilmember Regan. He discussed the funds that the town contributed to the HES in last year's budget toward the playground enclosure.

As he mentioned at last week's work session, Councilmember Dhakal stated that he attended the Fairfax County Economic Development Committee meeting where they discussed some great ideas. This included ways to create workforce learning and enlarging the talent pool in the county. He recognized Economic Development Manager Dennis Holste and stated that he would like to discuss how the town could benefit from the county's programs.

Councilmember Dhakal stated he was looking forward to comments on the budget that evening.

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Councilmember Friedrichs: Stated that it was nice to see some familiar faces in the Chambers that evening. She was also looking forward to comments from the public.

Councilmember Friedrichs stated that while she was unable to attend the 60th anniversary of HES last week, she enjoyed recently attending the school's career day.

Councilmember Friedrichs stated that she attended Friday Night Live's volunteer training with Mayor Olem, and she enjoyed seeing all the volunteers.

Councilmember Friedrichs discussed events held that past weekend. This included VegFest, which the owner of GreenFare and several other businesses had brought to the town; book sale at Herndon Fortnightly Library, which Councilmember Regan had mentioned previously; LINK food drive; native plant sale at ArtSpace; and the Runnymede Park Clean-Up. She was grateful for the town's volunteers, who she wanted to recognize during National Volunteer Month. She also gave kudos to town staff for their work on these events.

Councilmember Friedrichs stated that the Community Business Partnership of Northern Virginia had reached out to her, and their Executive Director was interested in working with Herndon's arts community on business loans. This individual was also the head of the Northern Virginia Black Chamber of Commerce. She encouraged entrepreneurs to take advantage of events hosted by these organizations.

Councilmember Friedrichs indicated that the Herndon Police Department (HPD) had received many complaints about speeding and reckless driving. She continued to be concerned about drag racing, mufflers on vehicles, and the sense in the community that nothing was being done. She stated that was not true, and she knew HPD was working to address speeding. She was concerned about the culture of impunity that she thought had happened during COVID.

Councilmember Regan: No comments.

Councilmember Singh: Stated that he had no comments, but he wanted to welcome former Town Manager Art Anselene, who was at the meeting that evening.

Vice Mayor del Aguila: Wanted to thank the public for providing comments on the FY 2023 budget items. He would reserve his comments for those items.

Mayor Olem: Stated that she attended the Herndon Chamber meeting with Councilmember Friedrichs on Tuesday, April 19, where they received an update from Senator Boysko and Delegate Shin. She enjoyed attending and learning about what was happening at the General Assembly.

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Mayor Olem attended a tour of the newly renovated Church of Jesus Christ of Latter-Day Saints Washington, DC Temple on Thursday, April 21. She stated the last time it was open to the public was around 1974/1975 and enjoyed taking the rare opportunity to visit.

Mayor Olem was happy to attend the town's Earth Day/Arbor Day event on Saturday, April 23, where the Virginia Department of Forestry presented the town with its "Tree City USA" designation for the 33rd year in a row. John Dudzinsky, Community Forester, was hired in 1989, and had been instrumental in the many years of this designation. Following the event, she went to ArtSpace to enjoy the native plant sale.

Mayor Olem echoed her colleagues' comments about HES' anniversary and stated she was glad to see her sons' previous teachers.

Mayor Olem stated that she enjoyed attending VegFest last weekend, which she thought was like a mini-Herndon Festival. There were music and educational programs, and it was held at the Northwest Federal Credit Union site in town.

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Olem asked Amanda Kertz, Chief Deputy Town Clerk, whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda. Ms. Kertz stated that comments were provided to Council and entered into the record on Public Hearing items: #6, Ordinance 22-O-06, Water and Sewer rates; #7, Ordinance 22-O-07, to amend Chapter 30 (FINANCE AND TAXATION), Massage Therapists; #8, Ordinance 22-O-08, to amend Chapter 30 (FINANCE AND TAXATION), the town's interest rates; #9, Ordinance 22-O-09, compensation for mayor and council members; #13, Ordinance 22-O-12, to amend Chapter 66, to permit seasonal outdoor seating; and the proposed FY 2023 budget items. The Clerk did not receive disclosures from Council on any item listed on the agenda that evening.

5. COMMENTS FROM THE AUDIENCE

Mayor Olem reminded those in attendance that they could comment on any items that were not public hearings at this time. They could comment on public hearing items when she called the specific item. Mayor Olem reviewed the process for speaking and providing comments.

The following individual came forward and provided comments:

- Arthur Anselene, 714 Huntsman Place, Herndon: Offered his congratulations and best wishes to Mr. Dudzinsky in his upcoming retirement. Mr. Anselene discussed leaf pick-up and asked the town to consider extending the leaf pick-up further into December.

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PUBLIC HEARINGS

Mayor Olem recognized Lesa Yeatts, Town Attorney, to outline the voting requirements for the FY 23 budget.

Ms. Yeatts stated that the first four public hearings on: water and sewer rates; massage therapists; town's interest rates; and compensation to the mayor and Town Council; would be separate public hearings, and action on the proposed ordinances would require a majority of the Town Council, which was four.

A separate public hearing would be held on the proposed ordinance to levy the taxes, and action on the proposed ordinance would require a two-thirds vote of Council, which was five. The next two public hearings would be held concurrently, with separate action the Fiscal Planning Resolution, which would require a majority of those present and voting, which was four (if all members of Council were present and voting). The Appropriation Ordinance would require a majority of the Town Council, which was four.

Mayor Olem stated that the next seven public hearings were continued from the Council's April 12 meeting and related to the FY 23 Budget. They would be discussed concurrently, and Council would take separate action on each item. The two General items that concerned the Cemetery and Golf Fees, also continued from the April 12 meeting, would be discussed after the public hearings were held.

6. **Ordinance 22-O-06, to amend Chapter 74 (UTILITIES), Article II (Sewers & Sewage Disposal), Division 5 (Sanitary Sewer System Rates & Charges), Section 74-262; and Article III (Water), Division 2 (Service), Section 74-326 (Schedule of Charges), to increase the service and usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2022;**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, April 1, 2022 and Friday, April 8, 2022 issues.

7. **Ordinance 22-O-07, to amend Chapter 30 (FINANCE AND TAXATION), Article VII (Business, Professional, Occupational License), Section 30-211 (Definitions), and Section 30-246 (Enumeration), and to add Section 30-266 (Personal, Business Services, and all other business occupations not specifically listed) to recognize the massage therapist occupation as a business and to classify massage therapist for BPOL tax purposes;**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, April 1, 2022 and Friday, April 8, 2022 issues.

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8. **Ordinance 22-O-08, to amend Chapter 30 (FINANCE AND TAXATION), Article II (Real and Personal Property), Section 30-39 (Date real property taxes due and payable; penalties and interest) to reduce the rate of interest on any unpaid tax from ten to one percent and to change the interest rate to accrue upon failure to pay any installment when due;**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, April 1, 2022 and Friday, April 8, 2022 issues.

9. **Ordinance 22-O-09, to establish the compensation to be paid to the Town of Herndon mayor and council members, as provided under Section § 15.2-1414.7 of the Code of Virginia. No increase in salary shall take effect during the incumbents' term in office;**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, March 25, 2022 and Friday, April 1, 2022 issues.

10. **Ordinance 22-O-10, to Levy Taxes on Real Estate and Manufactured Homes, and Other Subjects for the Fiscal Year 2023 Budget;**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, March 25, 2022 and Friday, April 1, 2022 issues.

11. **Resolution 22-G-27, to Adopt a Fiscal Planning Resolution for the Fiscal Year 2023 Budget for the Town of Herndon; and**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, March 25, 2022 and Friday, April 1, 2022 issues.

12. **Ordinance 22-O-11, to Appropriate Funds to implement the Fiscal Year 2023 Budget for the Town of Herndon, establishing the Pay Plan, and reserving on-going and Capital Funding for this Fiscal Year.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, March 25, 2022 and Friday, April 1, 2022 issues.

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FY 2023 Proposed Budget

[Note: These items were continued from the April 12, 2022 public hearing]

Mayor Olem recognized Mr. Ashton to provide comments on the budget. Mr. Ashton stated the budget process began in October, which was followed by a robust series of public hearings. He was excited about the new interactive budgeting tool, ClearGov, and stated that once approved, the budget would be uploaded to the website and updated in ClearGov. He briefly reviewed the budget process and the public hearing items that were included in the FY 23 Budget. He stated that the budget team members were available to answer any questions on the material they had presented.

Mayor Olem indicated she would call the public hearings, which had remained open from the last public hearing on April 12.

Ms. Yeatts asked Mayor Olem to state for the record that she was opening all seven public hearings at that time, which Mayor Olem then declared.

Public Hearing on Ordinance 22-O-06, Water & Sewer

The public hearing was held, and the following individual provided testimony:

- Jay Hadlock, 515 Alabama Drive, Herndon, expressed concern about the proposed rate increases and thought that the service charges were excessive. He asked that the peak rates cover one billing cycle rather than two if those rates are maintained.

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

Councilmember Friedrichs moved to approve Ordinance 22-O-06, to amend Chapter 74, to increase the usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2022. Councilmember Dhakal seconded the motion.

There were brief comments from Council.

In response to queries from Councilmember Singh, Mr. Ashton stated that he provided an email to Council that outlined the peak rates. He stated that the water peak rates were more advantageous because they would not take the sewer rate into account.

In response to queries from Councilmember Singh, Robert Tang, Director of Finance, explained the debt service rate. He stated that the town was extremely healthy regarding debt service.

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In response to queries from Vice Mayor del Aguila, Mr. Ashton agreed that nothing had changed from last week's work session.

Vice Mayor del Aguila asked staff to outline, for the record, what the town had been paying for water and sewer over the last 10 years, what the town should have been paying, and what it would likely pay in the future.

Responding queries from to Vice Mayor del Aguila, Mr. Ashton discussed the water and sewer rates over time. From 2011 to 2018, the rates remained flat. He addressed Mr. Hadlock, who asked about what the town pays, and stated that the town paid a wholesale rate and there was a markup for the town's handling of the water and sewer. The biggest charge was the commodity charge from Fairfax Water and Fairfax County to handle the sewer and he stated those rates had been climbing. While water usage was down, the commodity rates had been climbing. Additionally, the town has had to make numerous repairs to the pipes in the ground. Over the period he mentioned, the town had not covered the operational expenditures. He reviewed how the town paid for those improvements in the past and what the consultant's model showed for the future. He stated it was still the lowest priced service in the region, even with the proposed adjustments.

Vice Mayor del Aguila thanked staff for addressing the water and sewer rate issues and stated that the consultant's rate model showed what to expect, but it did not bind future Councils to follow it.

Councilmember Friedrichs discussed the water and sewer system costs and stated that the proposed charges would not increase the town's budget but could help prevent losing money. She also talked about how this was an enterprise fund, which would pay for itself. The reason for the proposed increase was to pay for the cost of product delivery in the future.

Councilmember Dhakal appreciated his colleagues' comments and emphasized the gap between the revenue and expenditures.

Mayor Olem discussed water and sewer emergencies, like water main breaks, that the town had to address. She stated a lot of maintenance was needed and she discussed the town's previous water and sewer rate studies.

Responding to Mayor Olem about the water and sewer rate studies, Mr. Ashton said the first was in 2018, and the Council adopted a modest increase. Another increase was adopted in 2019. With COVID, the town did not raise the water and sewer rates, and with it waning, staff had reengaged the consultants for another rate study earlier this year. He stated that the town had to address the aging system to continue to provide its current level of service.

Mayor Olem emphasized the importance of maintaining town's the infrastructure.

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Councilmember Singh said that he made a comment at last week's work session about how the cost structure for this fund did not make sense to him. He did not understand how things like water tower repairs cost so much money. He also did not think that the peak rate cost was justified and indicated he would not support this item.

The question was called on the motion, which carried by a 6-1 roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Singh voting "no."

Ordinance 22-O-06 to amend Chapter 74 (UTILITIES), Article II (Sewers & Sewage Disposal), Division 5 (Sanitary Sewer System Rates & Charges), Section 74-262 (Schedule of Rates); and Article III (Water), Division 2 (Service), Subdivision II (In-Town Service Charges), Section 74-326 (Schedule of Charges), to increase the service and usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2022.

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

1. The following sections or provision of the Herndon Town Code, as amended, are amended and re-ordained as follows:

CHAPTER 74 (UTILITIES)

ARTICLE II. SEWERS & SEWAGE DISPOSAL

DIVISION 5. SANITARY SEWER SYSTEM RATES & CHARGES

Sec. 74-262. Schedule of Rates.

- (a) The rate schedule for sanitary sewer service shall be determined on the basis of water consumed and shall be charged at the rate of ~~\$6.28~~ **\$7.16** per 1,000 gallons of water used, except as otherwise provided in this division.

- (f) A service charge per bill rendered shall be assessed for all metered water service as follows:

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Quarterly Billing

<i>Meter Size (inches)</i>	<i>Charge</i>
5/8	\$ 7.40
3/4	\$ 10.21
1	\$ 15.85
1 1/2	\$ 29.96
2	\$ 46.89
3	\$ 92.02
4	\$ 142.79
6	\$ 283.83

ARTICLE III. WATER

DIVISION 2. SERVICE

Subdivision II. In-Town Service Charges

Sec. 74-326. Schedule of charges.

(a) The water usage charge shall be ~~\$3.21~~ \$3.31 per 1,000 gallons, based on the consumption of water as measured by readings of the water meter serving the property.

(b) A service charge per bill rendered shall be assessed for all metered water service as follows:

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Quarterly Billing

<i>Meter Size (inches)</i>	<i>Charge</i>	
5/8	\$ 10.54	\$ 8.97
3/4	\$ 15.80	13.45
1	\$ 26.33	22.41
1 1/2	\$ 52.68	44.83
2	\$ 84.27	71.72
3	\$ 168.55	143.45
4	\$ 263.36	224.14
6	\$ 526.73	448.28

(c) All water consumed during the peak use periods in excess of the average consumption of the preceding two winter quarter billing periods shall be charged an additional amount of ~~\$5.46~~ \$5.64 per 1,000 gallons. This peak use period charge shall be applied in addition to the base water usage charge in subsection (a) above.

2. This ordinance shall be effective for all meter readings taken on or after July 1, 2022.

**Public Hearing on
Ordinance 22-O-07, Massage Therapists**

The public hearing was held, and the following individuals provided testimony:

- Casey White, 491 Carlisle Drive Herndon, stated that she was speaking on behalf of the town's massage therapists in supporting the ordinance changes.
- Cary Bundy, 423 Carlisle Drive, Herndon, supported the ordinance changes.

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

Councilmember Friedrichs moved to approve Ordinance 22-O-07, to amend Chapter 30, to recognize the massage therapist occupation as a business and to classify massage therapist for BPOL tax purposes. Councilmember Dhakal seconded the motion.

There were brief comments from Council.

Councilmember Friedrichs thanked the massage therapists who brought this problem up to Council to fix the language. She stated the Council would work on fixing the verbiage issue in the future.

Councilmember Dhakal echoed Councilmember Friedrichs in thanking the massage therapists for coming forward. He especially thanked Meg Donnelly, Casey White, and Cary Bundy. He also thanked Mr. Tang for his role for finding the code error and moving this forward. He asked residents to let them know if they see any other discrepancies in the town code.

Responding to Vice Mayor del Aguila's concern about the wording on "state licensure," Ms. Yeatts explained that the "certified" language in the proposed ordinance referenced the Fairfax County code. It was written that way, so the town was consistent with the county in its code and enforcement.

Councilmember Singh echoed the previous comments and expressed support for massage therapy.

Mayor Olem echoed her colleagues' previous comments. She was glad to help the massage therapists and to be moving this forward.

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

Ordinance 22-O-07, to amend Chapter 30 (FINANCE AND TAXATION), Article VII (Business, Professional, Occupational License), Division 1 (Generally), Section 30-211 (Definitions), Section 30-246 (Enumeration), and to add Section 30-266 (Personal, Business Services, and all other business occupations not specifically listed), to recognize the massage therapist occupation as a business and to classify massage therapist for BPOL tax purposes.

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

1. The following sections or provision of the Herndon Town Code (2000), as amended, are amended and re-ordained as follows:

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CHAPTER 30 (FINANCE AND TAXATION)

ARTICLE VII. BUSINESS, PROFESSIONAL, OCCUPATIONAL LICENSE

DIVISION 1. GENERALLY

Sec. 30-211. Definitions

License year means the calendar year for which a license is issued for the privilege of engaging in business.

Massage means the treatment, for compensation, of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body, unless the massage is excluded from regulation by Code of County of Fairfax § 28.1-1-4.

Massage establishment means any fixed place of business where a massage is administered to a client, unless the place is excluded from regulation by Code of County of Fairfax § 28.1-1-4.

Massage therapist means any individual certified as a massage therapist by the Board of Nursing of the Commonwealth of Virginia.

Operator of coin-operated machines means any person selling, leasing, renting or otherwise furnishing or providing a coin-operated amusement machine operated on the coin-in-the-slot principal; provided, however, that this term shall not include a person owning fewer than three coin-operated machines and operating such machines on property owned or leased by such person.

DIVISION 2. FEES AND TAXES

Sec. 30-246. Enumeration

(b) There is no fee for the issuance of such license. In addition to the license tax specified in subsection (a) of this section, and except as may be otherwise provided in this article or in Code of Virginia, §§ 58.1-3712, 58.1-3712.1 and 58.1-3713, every such person or business with annual gross receipts, purchases, or retail or wholesale sales, as appropriate, of more than \$100,000.00 shall be

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assessed and required to pay annually a license tax on all the gross receipts, purchases, or retail or wholesale sales, as appropriate, of such persons includable as provided in this article at a rate set forth in this subsection (b) for the class of enterprise listed:

- (1) For contractors and persons constructing for their own account for sale, \$0.13 per \$100.00 of gross receipts (Code of Virginia, § 58.1-3706 A.1);
- (2) For retailers, including those engaged in the short-term rental business as defined in Code of Virginia, § 58.1-3510.4(B) (however defined), (but excluding those engaged in commercial leasing covered by section 30-265) \$0.13 per \$100.00 of gross receipts (Code of Virginia, § 58.1-3706 A.2);
- (3) For financial, real estate and professional services, \$0.40 per \$100.00 of gross receipts (for the license tax for money lenders, see section 30-252) (Code of Virginia, § 58.1-3706 A.3);
- (4) For personal and business services and all other businesses and occupations not specifically listed or exempted in this article or otherwise by law, \$0.21 per \$100.00 of gross receipts (for the license tax for repair services, see section 30-263) (Code of Virginia, § 58.1-3706 A.4);
- (5) For wholesalers, including peddlers at wholesale, \$0.05 per \$100.00 of purchases (Code of Virginia, §§ 58.1-3718, 58.1-3719);
- (6) For carnivals, circuses and speedways, \$0.00 for each performance held in this town (Code of Virginia, § 58.1-3728);
- (7) For fortunetellers, clairvoyants and practitioners of palmistry, \$500.00 per year (Code of Virginia, § 58.1-3726);
- ~~(8) For massage parlors, \$1,000 per year (Code of Virginia § 58.1-3706);~~
- (9)(8) For itinerant merchants or peddlers (except as provided below), \$12.50 per week, not to exceed \$500.00 per year (Code of Virginia, § 58.1-3717);
- ~~(10)(9)~~ For photographers, \$30.00 per year (Code of Virginia, § 58.1-3727);
- ~~(11)(10)~~ For permanent coliseums, arenas or auditoriums having a maximum capacity in excess of 10,000 persons, open to the public, \$1,000.00 per year (Code of Virginia, § 58.1-3729);
- ~~(12)(11)~~ For savings and loan associations and credit unions, \$50.00 per year (Code of Virginia, § 58.1-3730); and

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- ~~(13)~~(12) For direct sellers as defined in Code of Virginia, § 58.1-3719.1, with total annual sales in excess of \$4,000.00, \$0.20 per \$100.00 of total annual retail sales, or \$0.05 per \$100.00 of total annual wholesale sales, whichever is applicable (Code of Virginia, § 58.1-3719.1). Direct sellers are governed by rules governing emerging businesses set out in Section 30-247(b)–(d).

Sec. 30-266. Personal, Business Services, and all other business occupations not specifically listed.

Every person conducting or engaging in any personal service occupation, businesses, trades, or callings not specifically classified as “financial, real estate, or professional service” shall pay an annual license tax of \$0.21 per \$100.00 of gross receipts of the base year. The license tax imposed by this section shall be in addition to any other specific town license tax. Massage therapists and massage establishments under this chapter should be considered as other business occupation for business tax purposes so as long as they are in compliance with Chapter 14-70 Massage Regulation.

2. This ordinance shall be effective on and after July 1, 2022.

**Public Hearing on
Ordinance 22-O-08, Town Interest Rate**

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

On motion of Regan, seconded by Vice Mayor del Aguila, Ordinance 22-O-08, to amend Chapter 30, to reduce the rate of interest on any unpaid tax from ten to one percent & to change the interest rate to accrue upon failure to pay any installment when due, was approved and carried by unanimous roll call. The vote was: Councilmembers, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting “Aye.” Councilmember Alam was away from the dais.

Ordinance 22-O-08, to amend Chapter 30 (FINANCE AND TAXATION), Article II (Real and Personal Property), Division 2 (Assessment and Collection), Section 30-39 (Date real property taxes due and payable; penalties and interest), to reduce the rate of interest on any unpaid tax from ten to one percent and to change the interest rate to accrue upon failure to pay any installment when due.

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(public hearing)**

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

2. The following sections or provision of the Herndon Town Code (2000), as amended, are amended and re-ordained as follows:

CHAPTER 30 (FINANCE AND TAXATION)

ARTICLE II. REAL AND PERSONAL PROPERTY

DIVISION 2. ASSESSMENT AND COLLECTION

Sec. 30-39. Date real property taxes due and payable; penalties and interest.

(b) Upon failure to pay any installment when due, a penalty of ten percent will be incurred and assessed, and interest will accrue and be assessed on any unpaid tax and penalty at the rate of ~~ten one~~ percent per annum beginning the first day following the day such taxes are due. ~~For the second and subsequent years of delinquency, interest will accrue and be assessed on any unpaid tax at a rate of interest established pursuant to section 6621 of the Internal Revenue Code, as amended, or ten percent annually, whichever is greater.~~ Interest on any tax payment that is past due shall begin to accrue on the date after the tax is due and such interest shall continue to accrue until the date on which payment is made. Any penalty assessed shall become a part of the tax and in no case shall exceed the amount of the tax assessable.

2. The ordinance shall be effective on and after June 1, 2022.

**Public Hearing on
Ordinance 22-O-09, Compensation for Mayor and Councilmembers**

The public hearing was held, and the following individuals provided testimony:

- Steve Mitchell, 1291 Monroe Street Herndon, thanked the Council for taking this issue into consideration. He stated that he had requested this in the past, was glad to see the proposal, and emphasized this would take effect for the next Council.
- Barry Clendenin, 521 Filmore Street, Herndon, asked to provide comments on public hearing items #9 through #12.

**April 26, 2022
(public hearing)**

Responding to Mr. Clendenin, Ms. Yeatts stated that he should make his comments during each public hearing item separately. Mayor Olem asked Mr. Clendenin to give his comments during each public hearing.

Mr. Clendenin stated that he would start his comments and they could stop him if needed. He stated that with the high rate of inflation, the county was planning to reduce the real estate tax rate. He offered several recommendations for the FY 23 budget and on the Council's salaries, also provided in his written comments, which are on file in the Town Clerk's office.

- Jay Hadlock, 515 Alabama Drive, Herndon, stated that the proposed increase to the mayor and council salaries was excessive. He supported what staff originally proposed in its presentation, which was \$12,000 for the mayor and \$10,000 for the council. He thought the town should also review compensation to its board and commission members.

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

Vice Mayor del Aguila moved to approve Ordinance 22-O-09, to establish the compensation to be paid to the Town of Herndon mayor and councilmembers as follows:

- that the compensation paid the mayor be increased to **sixteen thousand dollars (\$16,000)** per annum and the compensation for council members' be increased to **fifteen thousand dollars (\$15,000)** per annum; and
- this ordinance shall become effective on January 1, 2023, beginning with the term of the 2023-24 Herndon Mayor and Town Council Members.

Councilmember Regan seconded the motion.

There were brief comments from Council.

Vice Mayor del Aguila stated that a lot has changed since 1986, when the mayor and councilmembers salaries were last updated. He hoped this increase would attract more citizens to get involved in the town. He thought that they should also look at the salaries for the town's boards and commissions.

Councilmember Regan echoed Vice Mayor del Aguila's comments and stated that the proposed increase was close to the cost-of-living adjustment from 1986 to 2024. Knowing how difficult it would be for a future Council to tackle this issue in the next several years, he thought it made sense to get out in front of it.

**April 26, 2022
(public hearing)**

Councilmember Singh said that he proposed the Council initiative on this topic. He discussed the differences he saw in detail and sophistication from 1986 to the present. He thought that it was important to increase the salaries. While the level was not to his liking, he understood it was the Council's decision. He echoed Vice Mayor del Aguila's thoughts on attracting individuals with more diverse backgrounds and qualifications.

Councilmember Dhakal expressed support for the ordinance and echoed his colleagues' comments about hoping the salary increase would get more citizens involved. He thought this increase could compensate for someone who was working a second job.

Councilmember Alam expressed her support for the ordinance.

Councilmember Friedrichs stated the proposed ordinance was the result of a lot of discussion and give-and-take. She preferred the compensation levels not to be as high and agreed with Mr. Clendenin's comments about how this did not look good in a time of inflation and increasing costs. On the other hand, she thought that was usually the case whenever the Council has discussed this issue, and she understood it was not a significant impact on the budget. She hoped it would encourage others to serve, for example, someone who needed to pay for childcare.

Mayor Olem indicated she was conflicted about this ordinance, especially after serving on other town boards. She wanted to look at all the town's boards and commissions' salaries and propose some kind of increase. She liked staff's original proposal. She thought that this was too high of an increase without looking at the other boards and commissions. She stated she would not support this item.

The question was called on the motion, which carried by a 6-1 roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, and Vice Mayor del Aguila, voting "Aye." Mayor Olem voting "No."

Ordinance 22-O-09, to establish the compensation to be paid to the Town of Herndon mayor and council members, as provided under Section § 15.2-1414.7 of the Code of Virginia.

WHEREAS, the Code of Virginia Sec. § 15.2-1414.7 provides that a town council may establish the compensation to be paid to council members and the mayor, however no increase in salary of a council member or mayor shall take effect during the incumbent council member's or mayor's term in office; and

WHEREAS, the compensation levels of the mayor and council have not been adjusted since June 1986, and it is the opinion of the town council that the compensation be increased at this time in view of the amount of time and effort involved in serving.

**April 26, 2022
(public hearing)**

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that the compensation paid the mayor be increased to **sixteen thousand dollars (\$16,000)** per annum and the compensation for council members' be increased to **fifteen thousand dollars (\$15,000)** per annum.

BE IT FURTHER ORDAINED by the Town Council of the Town of Herndon, Virginia, that this ordinance shall become effective on January 1, 2023, beginning with the term of the 2023-24 Herndon Mayor and Town Council Members.

**Public Hearing on
Ordinance 22-O-10, Tax Levy**

The public hearing was held, and the following individual provided testimony:

- Jay Hadlock, 515 Alabama Drive, Herndon, discussed inflation, Fairfax County's approval of a \$0.03 reduction to its real estate tax rate, and the county's vehicle property tax rate. He asked the town to adjust the proposed real estate tax levy to \$0.26 per \$100 of assessed value. He reviewed why he was asking for a tax reduction.

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

Main Motion

(Approved)

Vice Mayor del Aguila moved to **APPROVE** Ordinance 21-O-10, as presented to fix the tax levies for the fiscal year beginning July 1, 2022 and ending June 30, 2023, as follows:

- **Real Estate**: On each \$100.00 of the valuation of real estate and improvements to the Town \$.2650;
- **Personal Property & Merchants' Capital**: On each \$100.00 of the valuation of tangible personal property classified by Section 58.1-3503 and 58.1-3510 of the Code of Virginia \$.00;
- **Vehicles Used as Manufactured Homes & Offices**: On each \$100.00 of the valuation of vehicles without motive power, used or designed to be used as manufactured homes as classified by Section 58.1-3506(A), paragraph 10, of the Code of Virginia \$.2650;

**April 26, 2022
(public hearing)**

- **Farm Machinery, Farm Tools & Farm Livestock:** On each \$100.00 of the valuation of farm machinery, farm tools and farm livestock as classified by Section 58.1-3505 of the Code of Virginia \$.00;
- **Machinery and Tools:** On each \$100.00 of the valuation of machinery and tools classified by Section 58.1-3507 of the Code of Virginia \$.00;
- **Other Classifications of Tangible Personal Property:** On each \$100.00 of the valuation of tangible personal property as classified by Section 58.1-3506 [except for Section 58.1-3506 (A), paragraph 10] of the Code of Virginia \$.00; and
- **Miscellaneous Levies:** Except as provided above and other ordinances adopted by the Town Council in this budget cycle all other taxes and licenses previously enacted by the town are imposed and levy made to the same extent and at the same rate as during the Fiscal Year 2022.

Councilmember Dhakal seconded the motion.

There were brief comments from Council.

Councilmember Friedrichs thanked staff for preparing a balanced budget during a difficult year. She was glad the county was able to decrease its tax rate and stated that would have a positive effect on town residents as well. She thought it was a good budget and stated she would support the tax levy.

Substitute Motion

(Died for lack of a second)

Councilmember Singh expressed concern over the fact that property values have increased by approximately by 11 percent and that the tax rate was staying the same. Therefore, he thought that the tax levy should be decreased.

Councilmember Singh made a substitute motion to **approve Ordinance 22-O-10, revised to lower the tax rate to \$0.26, or even lower, on residential property.**

Ms. Yeatts asked Councilmember Singh to clarify if his substitute motion applied to both commercial and residential properties.

Councilmember Singh stated that he wanted to “reduce that tax rate on the residential property to \$0.26 per \$100.”

Mr. Ashton stated Councilmember Singh had said “residential.” The rate was for residential and commercial properties. He asked if he meant both residential and commercial properties.

**April 26, 2022
(public hearing)**

Councilmember Singh stated that he moved to **reduce the tax levy on the commercial and residential properties from \$0.2650 per \$100 to \$0.26 per \$100 value.**

Mayor Olem asked if there was a second to the substitute motion. Seeing none, the motion died for lack of a second.

**Vote on
Main Motion**

(Approved)

There were further comments from Council.

Councilmember Regan discussed several prior budgets, going back to 2018. He stated the town was getting back to the level it was in 2019 before the pandemic.

Mayor Olem echoed Councilmember Regan's comments and stated it had been a difficult two years with COVID which had hit the town hard. She discussed the impact of COVID on the town and having to delay routine maintenance, upgrades, and some services. She thought the proposed tax rate was a good compromise.

Councilmember Dhakal discussed his support for the ordinance, highlighting the balance between the revenue and providing quality services. He stated that the pandemic had hit everyone, including the town, and there were a lot of projects in the pipeline. He understood the request to decrease the tax rate, but there was a lot of work the town should support.

The main motion restated for clarity, which was to approve Ordinance 21-O-10, as presented.

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

Ordinance 22-O-10, to Levy Taxes on Real Estate and Manufactured Homes, and Other Subjects for the Fiscal Year 2023 Budget.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that the Town Council fixes and orders the tax levies for the fiscal year beginning July 1, 2022 and ending June 30, 2023, as follows:

Real Estate

On each \$100.00 of the valuation of real estate and improvements to the Town.
\$.2650

**April 26, 2022
(public hearing)**

Personal Property and Merchants' Capital

On each \$100.00 of the valuation of tangible personal property classified by Section 58.1- 3503 and 58.1-3510 of the Code of Virginia.

\$.00

Vehicles Used as Manufactured Homes and Offices

On each \$100.00 of the valuation of vehicles without motive power, used or designed to be used as manufactured homes as classified by Section 58.1-3506(A), paragraph 10, of the Code of Virginia.

\$.2650

Farm Machinery, Farm Tools and Farm Livestock

On each \$100.00 of the valuation of farm machinery, farm tools and farm livestock as classified by Section 58.1-3505 of the Code of Virginia.

\$.00

Machinery and Tools

On each \$100.00 of the valuation of machinery and tools classified by Section 58.1-3507 of the Code of Virginia.

\$.00

Other Classifications of Tangible Personal Property

On each \$100.00 of the valuation of tangible personal property as classified by Section 58.1-3506 [except for Section 58.1-3506(A), paragraph 10] of the Code of Virginia.

\$.00

Miscellaneous Levies

Except as provided above and other ordinances adopted by the Town Council in this budget cycle all other taxes and licenses previously enacted by the town are imposed and levy made to the same extent and at the same rate as during the Fiscal Year 2022.

Concurrent Public Hearings

**Resolution 22-G-27, the Fiscal Planning Resolution; and
Ordinance 22-O-11, the Appropriation Ordinance.**

Mayor Olem called the concurrent public hearings and stated Council would take separate action on each.

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

**April 26, 2022
(public hearing)**

Vote on
Resolution 22-G-27

On motion of Councilmember Friedrichs, seconded by Councilmember Alam, and approved by unanimous roll call vote, Resolution 22-G-27, which adopts for the purpose of fiscal planning during the fiscal year 2023 for the Town of Herndon, Virginia, the budget prepared by the Town Manager, set out in "Proposed FY 2023 Budget" dated April 1, 2022, on file in the office of the Town Manager, was approved, as presented. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Resolution 22-G-27, to adopt a Fiscal Planning Resolution for the Fiscal Year 2023 Budget for the Town of Herndon.

WHEREAS, the Town Manager of the Town of Herndon, Virginia, has submitted to the Town Council of the Town of Herndon, Virginia, a proposed budget; and

WHEREAS, the town properly advertised the April 12 and April 26, 2022 public hearings on the proposed budget; and

WHEREAS, it is the intent of the Town Council of the Town of Herndon, Virginia, to adopt the proposed budget with amendments, if any.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby adopts for the purpose of fiscal planning during the fiscal year 2023 for the Town of Herndon, Virginia, the budget prepared by the Town Manager, set out in "Proposed FY 2023 Budget" dated April 1, 2022, on file in the office of the Town Manager.

Vote on
Ordinance 22-O-11

On motion of Councilmember Dhakal, seconded by Vice Mayor del Aguila, and approved by unanimous roll call vote, Ordinance 22-O-11, to appropriate funds to implement the Fiscal Year 2023 Budget for the Town of Herndon, establishing the Pay Plan, and reserving on-going and Capital Funding for this Fiscal Year, was approved. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

**April 26, 2022
(public hearing)**

Ordinance 22-O-11, to Appropriate Funds to implement the Fiscal Year 2023 Budget for the Town of Herndon, establishing the Pay Plan, and reserving on-going and Capital Funding for this Fiscal Year.

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

1. There is appropriated and authorized for expenditure during the Fiscal Year 2023 such sums as appear in the Fiscal Planning Budget for the Fiscal Year 2023 as set out in "Proposed Fiscal Year 2023 Annual Budget" dated April 1, 2022, on file in the office of the Town Manager, and as may be subsequently modified by the Town Council.
2. No money shall be withdrawn from the treasury of the town and no obligation for expenditure of money can be incurred, except in accordance with the Fiscal Planning Budget, or with supplemental appropriations as may be made by the Town Council.
3. The town advertised the public hearing at least once in The Fairfax County Times newspaper and held a public hearing on the proposed budget at least seven days prior to approval of the proposed budget.
4. The Fiscal Year 2023 proposed schedule of salaries, set out in the Fiscal Planning Budget, are adopted effective July 1, 2022.
5. The Town Council may award to the Town Manager and the Town Attorney bonuses as provided for in the Fiscal Planning Budget for Fiscal Year 2023 for exceptional services rendered. Any such bonuses shall not become a part of these officers' annual salary.
6. The Town Council reserves, encumbers, and appropriates for Fiscal Year 2022 funding for capital and on-going projects, for which funds were previously appropriated. The Town Manager as of July 1, 2022, shall take the appropriate accounting steps to reserve and encumber these funds as of that date for Fiscal Year 2023 and to report to the Mayor and Town Council in this regard.

13. **Ordinance 22-O-12, to amend Chapter 66 (STREETS, SIDEWALKS AND CERTAIN OTHER PUBLIC PLACES), Sec. 66-1, and to create a new Article VI (Encroachments Over and Upon Public Rights-of-Ways), Division 1 (Generally), and Division 2 (Outdoor Seating Administrative Encroachments), to permit seasonal outdoor seating on public property.**

A Certificate of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, April 15, 2022 issue.

**April 26, 2022
(public hearing)**

Mayor Olem recognized David Stromberg, Zoning Administrator, for the staff report. Mr. Stromberg presented a PowerPoint dated April 26, 2022, which is on file in the Clerk's office.

Mr. Stromberg reviewed the proposed ordinance, which would allow outdoor seasonal seating by-right in certain downtown zoning districts, with conditions. He briefly discussed what outdoor dining had been during the pandemic and went over considerations for outdoor seating on public property. Similar to existing outdoor seating, seasonal outdoor seating must comply with ADA, ABC, building code, state, and county laws, along with additional restrooms if over 32 seats were added.

Mr. Stromberg reviewed the fees, permit and insurance requirements, location of the spaces, design guidelines, and other conditions. Applicants would have to reapply for a permit each season ~ proposed to be from March 15 to October 31 ~ pay application fees (\$100 and \$10 per square foot of perimeter), hold liability insurance, and be current on all taxes.

Mr. Stromberg discussed the design guidelines, which would be finalized if this item were approved. The guidelines included safety requirements and different ways to adhere to the ADA regulations.

Outdoor seating would be allowed in certain areas on sidewalks, in some on-street parking spaces, and on certain off-street public shared parking spaces. These spaces would have to meet the criteria included in the ordinance. Mr. Stromberg reviewed the locations of the off-street sites in the public shared parking lots. He stated that there were currently 11 unallocated spaces in the public shared parking program, so total permits in the public parking lots could not exceed 11 spaces.

Staff recommends approval of the proposed ordinance, as presented, including the conditions that staff outlined for outdoor seating.

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

There was a brief question and answer session between Councilmember Friedrichs and Mr. Stromberg, during which , Mr. Stromberg reviewed the locations and criteria for the on-street parking and the public shared parking spaces. The 11 spaces he mentioned would be for the off-street spaces. He stated the on-street spaces were required to be adjacent to the property and he did not see any locations where a restaurant would exceed the 20 percent and two space conditions.

In response to queries from Councilmember Dhakal, Mr. Stromberg discussed the ADA requirements for outdoor seating. He stated that five percent of the seating must be accessible and there had to be a pathway/ramp from the sidewalk to the seating area to comply with ADA.

**April 26, 2022
(public hearing)**

There was a brief question and answer session between Councilmember Singh and Mr. Stromberg, where he discussed the safety elements in the ordinance. He said that the water-filled barriers were safer than the “wheel stops” for the on-street spaces. There were several ways to put safety barriers on the on-street spaces.

There was a brief question and answer session between Councilmember Regan, Mr. Stromberg, and Lauri Sigler, Deputy Town Attorney.

In response to queries from Councilmember Regan, Mr. Stromberg confirmed there were not changes from the work session. Lauri Sigler, Deputy Town Attorney, clarified that the design guidelines were referenced in the ordinance, but had to be developed.

In response to queries from Councilmember Regan about the public shared parking spaces, Ms. Sigler reviewed what would happen if a developer bought into the public shared parking program. If the space were needed by another business, it would subtract from the 11 that were currently available.

Responding to Councilmember Regan, Mr. Ashton stated that staff typically knows about proffers, including public shared parking spaces, well in advance. Operationally, he did not see this as a consideration because of the lead time staff has on those applications. Councilmember Regan thought the town should refund the application fees to the restaurant if a developer purchased the space while they were using it for on-street outdoor seating.

Referring to the parking fees, Councilmember Regan stated he had suggested that the fee be amended to say “\$10.00 per square foot, or market rate...” Councilmember Dhakal then suggested he meant lost revenue, to which Councilmember Regan agreed, and he stated he might offer that as an amendment.

Vice Mayor del Aguila stated that as a full disclosure, he had met with staff that afternoon to discuss the proposed ordinance. He was pleased to see the ADA components in the ordinance.

In response to queries from Councilmember Alam, Mr. Stromberg described how the water weighted barriers would work for on-street outdoor seating.

Mayor Olem discussed the importance of including ADA compliance in the proposed ordinance. Responding to Mayor Olem, Mr. Stromberg stated that the Building Inspector’s office would enforce the regulations.

The public hearing was held, and the following individuals provided testimony:

- Sayed Hussain, owner of Zeffirelli Ristorante Italiano, 728 Vine Street, Herndon, expressed support for the proposed ordinance, discussed how it related to his business, and stated that it had been highly successful.

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(public hearing)**

- Steve Mitchell, 1291 Monroe Street, Herndon, manager of the James Building Development, which has two establishments in its building, expressed support for the proposed ordinance. He requested the Council to change the timeframe to run from March 1 to January 1. He also discussed the public shared parking program and requested that the Council allow businesses to have up to four spaces.
- Jenna (last name not stated), representing Sully's Pour House, located at 754 Elden Street, Herndon, asked for clarification on linear versus square feet referenced in the ordinance. She expressed support for the proposed ordinance, but she requested several changes. She agreed with Mr. Mitchell on not limiting restaurants to two on-street spaces and having the outdoor seating start earlier on March 1.
- Meron Yohannes, 703 Tamarack Way, Herndon, stated that she was a political appointee to the Department of Commerce and a member of the Planning Commission, but she was representing herself as a resident. She expressed support for the proposed ordinance, but she asked if the town would consider allowing the outdoor seating year-round to be more inclusive.

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

Main Motion

(Subsequently Amended)

Vice Mayor del Aguila moved to approve Ordinance 22-O-12, to amend Chapter 66, to permit seasonal outdoor seating on public property.

Councilmember Friedrichs seconded the motion.

Clarification

Following brief comments, Vice Mayor del Aguila stated that he would like to ask for a Friendly Amendment, to change the time period for outdoor seating to year-round, or whatever was acceptable to Council. If that did not work, he stated they could make changes in the next version of this ordinance.

Mayor Olem asked if Vice Mayor del Aguila was making the motion and making an amendment.

Vice Mayor del Aguila asked if he could make the motion and the amendment, to which Ms. Yeatts replied that he could not.

Ms. Yeatts stated that Vice Mayor del Aguila could withdraw his motion and make another motion, or someone else could make a Friendly Amendment to his motion.

Vice Mayor del Aguila stated he would keep the motion on the floor, and he assumed and hoped that someone would make a Friendly Amendment to his motion.

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(public hearing)**

Councilmember Friedrichs understood that snow removal was the biggest concern for making outdoor seating year-round. She asked if they could include in the ordinance that snow removal was the responsibility of the person renting the space.

Mr. Ashton emphasized that there were three types of outdoor seating in the ordinance, which were: the sidewalk; on-street; and parking lot. If the on-street parking spaces were filled year-round and a snowplow had to get through the street, the plow would push the snow into the dining area, potentially damaging it. The public shared parking spaces and sidewalks were less of a concern for him, but there was still a risk of some problems.

Councilmember Friedrichs thought this was a good option for the town, and she expressed concern over Jimmy's creating his outdoor patio at great expense, and how using the public shared parking spaces for outdoor seating would affect retail businesses. She thanked all of those who provided comments on the item that evening.

Friendly Amendment

Councilmember Dhakal expressed support for the proposed ordinance. He wanted to make a friendly amendment, but that he may need some help with the language.

Councilmember Dhakal wanted to differentiate between "off-street," which he meant was the public shared parking and sidewalk spaces, and "on-street," which he meant was the spaces in the street.

For the on-street, spaces, Councilmember Dhakal wanted to change the time period for outdoor seating from March 15 to March 1 as a start date, and the end date from October 31 to November 30. For the "off-street" spaces, he wanted to change outdoor seating to year-round.

Mayor Olem stated that some of the businesses in the downtown and sidewalk areas already had year-round outdoor dining.

Councilmember Dhakal clarified that he wanted to change the time period for outdoor seating to March 1 to November 30 for "on-street" spaces, and to make the time period year-round for "off-street" spaces.

Responding to Council, Ms. Yeatts advised that without making a substitute motion, amendments like this needed to be very concise.

Ms. Yeatts cautioned Councilmember Dhakal to be careful about using the word "off street," because that included sidewalks and public shared parking. Staff could assist with finding the right language.

Councilmember Dhakal moved to **approve Ordinance 22-O-12, with a Friendly Amendment**. He wanted to propose changes to lines 111 and 148.

**April 26, 2022
(public hearing)**

Ms. Yeatts asked if Councilmember Dhakal wanted to amend the motion that was on the floor, and Councilmember Dhakal agreed that was his intent.

Councilmember Dhakal stated that he wanted to change lines 111 and 148 of the ordinance, as follows:

- **Line 111:**

‘...The maximum time period for outdoor seating pursuant to the division is from March ~~15~~ 1 to ~~October 31~~ November 30 per calendar year...’

- **Line 148:**

‘...Each seasonal outdoor seating permit is limited to a period beginning March ~~15~~ 1 to ~~October 31~~ November 30 of each calendar year...’

Clarification

Councilmember Dhakal asked for assistance in finding the places where he needed to offer changes to the on-street and off-street parking spaces in the ordinance. He asked how they would differentiate between the types of parking.

Ms. Yeatts asked for Ms. Sigler or Mr. Stromberg to assist Councilmember Dhakal with the specific wording.

Ms. Sigler stated that there were three types of seating, which were the public shared parking seating, “right-of-way” seating area, which was on-street, and sidewalk.

Councilmember Regan suggested that Councilmember Dhakal meant to propose the following changes in his Friendly Amendment:

- **Lines 110-111:**

‘...The maximum time period for outdoor seating, pursuant to the division as defined in line 93 is from March ~~15~~ 1 to ~~October 31~~ November 30 per calendar year and would be the calendar year in other areas.’

Ms. Sigler restated the three types of outdoor seating areas, and asked Councilmember Dhakal if he meant to include the public shared parking and sidewalks as part of off-street parking.

Councilmember Dhakal clarified that he wanted to **make outdoor seating available year-round for the public shared parking spaces or sidewalks; and for Public Right-of-Way on-street spaces, outdoor seating would be from**

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(public hearing)**

March 1 to November 30. He wanted to make those revisions on the specific line items that pertain to these changes.

Ms. Sigler understood that Councilmember Dhakal was asking for year-round seating for the sidewalk and public shared parking spaces and limiting the on-street right-of-way spaces to March 1 to November 30.

Discussion

Councilmember Friedrichs asked if the proposed changes would help with staff's concerns.

Mr. Ashton stated that the biggest issue he saw was plowing the streets. He stated that for public shared parking spaces, big vehicles try and turn around in the parking lot and push the snow out. However, staff could make operational changes to allow off-street outdoor seating, both on sidewalks and public shared parking spaces, year-round. He stated that ensuring there were limitations on the on-street outdoor seating was critical.

Mr. Ashton indicated that the license agreement would state that the restauranter would be responsible for shoveling snow on their sidewalk and parking space(s). He also wanted to point out that is the pricing was based on the limited year. He thought the Council should consider the cost in making the proposed changes.

Vice Mayor del Aguila, the motion maker, stated that he would **accept the Friendly Amendment on the floor**. He said they could address other concerns at another point.

Councilmember Singh expressed concern about losing parking spaces on the street with outdoor seating year-round. He thought Council should take a closer look at how the public shared parking program would be impacted.

Mayor Olem stated she had heard from businesses that were concerned about parking in the downtown area if the proposed ordinance were adopted.

Request from Council

Councilmember Regan understood the concerns, but he stated that there was not a parking problem, but rather a parking duration issue. He thought they needed to pull "multiple levers" to fix the problem, and this was one.

Following his comments, Councilmember Regan made several requests related to outdoor seating moving forward, which were:

1. Enforcing two-hour parking rules.

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2. Creating shorter duration parking spaces in front of downtown businesses, for example 20-minute or 60-minute spaces. He asked for this to be done administratively, if possible, or to work on it at the Council level.
3. Establishing an “open carry alcohol zone” in the downtown, whether that was on one or both sides of Elden Street.

Councilmember Regan said that these suggestions would help bring in different sources of tax revenue, which he said could mean that residents would pay less in property taxes.

Clarification

Councilmember Singh asked Ms. Yeatts if he could make a motion to not change the time period for on-street parking. He wanted to keep the time limit as it was proposed in the original ordinance.

Ms. Yeatts stated that the Council needed to vote on the amended motion on the floor. If that failed, they would be back to the original motion, which it sounded like was what Councilmember Singh wanted to do.

Councilmember Singh asked if he could make a Friendly Amendment, and Ms. Yeatts stated that he could not because there was a pending motion on the floor.

Call the question

Vice Mayor del Aguila asked Mayor Olem to call the question on the motion.

**Vote on
Amended
Main Motion**

Ms. Yeatts restated the amended main motion by for clarity:

- **To APPROVE Ordinance 22-O-12, with the modification to lines 111 and 148, to allow the maximum time period for outdoor seating to be calendar year for public sidewalks and public property, otherwise known as Public Shared Parking, and to have the maximum time period for outdoor seating in public right-of-way areas, which are considered streets, from March 1 to November 30, per calendar year.**

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

**April 26, 2022
(public hearing)**

Ordinance 22-O-12, to amend Chapter 66 (STREETS, SIDEWALKS AND CERTAIN OTHER PUBLIC PLACES) Sec. 66-1 and create new Article VI (Encroachments Over and Upon Public Rights-of-Ways) Division 1 (Generally), and Division 2 (Outdoor Seating Administrative Encroachments), to permit seasonal outdoor seating on public property

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 as follows:

**CHAPTER 66 (STREETS, SIDEWALKS AND CERTAIN
OTHER PUBLIC PLACES)**

Article I. In General

Sec. 66-1. - Obstructing streets and sidewalks.

Except as may otherwise be provided by article VI of this chapter, this Code or resolution of the town council adopted pursuant to general law for the placement of improvements in a public right-of-way for a public purpose or the temporary closing of streets for other than public purposes, no person shall obstruct a street or sidewalk by placing or permitting thereon any bench, carton, barrel, box, cart, vehicle, merchandise, snow or ice from private land used for commercial purposes, or other article or fixture whatsoever, whether for exhibition, sale, or other purposes.

**Article V. Shared Mobility Devices
DIVISION 1. IN GENERAL**

Secs. 66-112 - 66-120. - Reserved.

Article VI. Encroachments Over and Upon Public Rights-of Ways.

DIVISION 1. -GENERALLY

Sec. 66-121. Purpose of article.

It is the general policy of the town that the public rights-of-way are to be reserved for public use or open space; and that the rights of the public, present and future, are not to be diminished by the installation of private improvements within public rights-of-way. Notwithstanding the foregoing, limited private

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encroachments into public rights-of-way may be permitted, subject to the express terms of this article and compliance with other provisions of this chapter.

Secs. 66-122 - 66-130. – Reserved.

DIVISION 2. – OUTDOOR SEATING ADMINISTRATIVE ENCROACHMENTS

Sec. 66-131. Administrative approval required for seasonal outdoor seating.

In accordance with the Code of Virginia § 15.2-2009, as amended, the town council hereby authorizes the director of community development and the director of public works or their designee, upon application to the department of community development, to administratively approve seasonal outdoor seating areas that encroach into public rights-of-way and other public places subject to the terms and conditions of article VI of this chapter. Furthermore, the town council hereby authorizes the director of public works to enforce the provisions of this Division.

If an application for an outdoor seating encroachment does not meet all of the criteria of Sec. 66-133, then the directors of public works and community development or their designees are prohibited from administratively approving the encroachment application, which said application must be denied.

Sec. 66-132. Seasonal Outdoor seating permit; definitions.

The terms used in the division and not here defined shall carry their ordinary meanings. For purposes of this division, the terms set out below shall carry the meanings set out below:

ABC. The Virginia Department of Alcoholic Beverage Control.

ADA. The Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008, 42 U.S.C. §§ 12101, et seq.

Director of community development. The director of the department of community development and their authorized designees.

Director of public works. The director of the department of public works and their authorized designees.

Eating Establishment. Any business meeting the criteria in Sec. 78-71.6 of the zoning ordinance which is properly licensed and lawfully located in the PD-TD, Planned Development Traditional Downtown, PD-D, Planned Development Downtown, and CC, Central Commercial zoning districts.

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Public Shared Parking Spaces. Shall have meaning as defined in Sec. 78-180 of the zoning ordinance but specifically exclude public shared parking spaces located on public streets.

Public Shared Parking Seating Area. An area on a public shared parking space to be used for seasonal outdoor seating associated with an adjacent eating establishment.

Principal Operator. The person or entity that operates an establishment.

Public Parking. For the purpose of this division, includes parking spaces located in public right-of-way (on-street parking spaces) or, in a public street easement, but specifically excluding public shared parking spaces.

Public Right-of-Way. For the purpose of this Division includes dedicated and otherwise acquired public right-of-way and public street easements having the characteristics of a municipal public street for the purpose of public travel and other uses consistent with a public municipal street.

Public Sidewalk. For the purpose of this Division includes dedicated and otherwise acquired public right-of-way and public streetscape easements having the characteristics of a municipal sidewalk for the purpose of non-vehicular public travel and other uses consistent with a public municipal sidewalk.

Seasonal outdoor seating. Any group of tables, chairs, or other seating fixtures and all related appurtenances maintained within the public sidewalk, or other right-of-way when located adjacent to an eating establishment having the same principal operator. Further, outdoor seating shall be temporary in nature, shall not be permanently affixed so as to extend below the sidewalk or other right-of-way, must not involve penetration of the sidewalk or right-of-way surface or be attached to any building, and shall be readily removable without damage to the surface of the sidewalk or other right-of-way. The maximum time period for outdoor seating in a Right-of-Way Seating Area pursuant to this division is from March 1 to November 30 per calendar year. The maximum time period for outdoor seating in a Public Shared Parking Seating Area or Sidewalk Seating Area pursuant to the division is one calendar year ending on December 31st.

Sidewalk Seating Area. An area on a public sidewalk or public streetscape easement to be used for seasonal outdoor seating associated with an adjacent eating establishment

Right-of-Way Seating Area. An extension of the sidewalk into the parking lane on a public right-of-way or public street easement to be used for seasonal outdoor seating associated with an adjacent eating establishment. The establishment of a Right-of-Way Seating Area for eligible Eating Establishments is limited to Lynn Street, Pine Street, Station Street, and the 700 block of Center Street.

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Sec. 66-133. Seasonal outdoor seating permit; requirements.

- (a) *Permit required; enforcement.* Subject to the provisions of this Division, seasonal outdoor seating may encroach into a portion of the public sidewalk, public right-of-way, or public shared parking only upon issuance of a seasonal outdoor seating permit as provided for in this Division. No other use of the area devoted to the seasonal outdoor seating shall be permitted. It shall be the responsibility of the director of public works to enforce the provisions of this division.
- (b) *Application requirements.*
- (1) Application for a seasonal outdoor seating permit shall be made to the director of community development on such application form and subject to such written procedures as the director may establish. Application for a seasonal outdoor seating permit shall be made by the principal operator of an eating establishment that is located at street level adjacent to the proposed outdoor seating area. The application shall be signed by principal operator of the eating establishment and by the owner of the property on which the eating establishment is located if the property owner is not the eating establishment operator.
 - (2) Seasonal outdoor seating areas whether in a sidewalk or public right-of way, must comply with all Seasonal Outdoor Seating Requirements, which address the allowed locations, design requirements, safety, and maintenance responsibilities that are approved by the directors of community development and public works
 - (3) Application fee. A nonrefundable application fee of \$100.00 shall accompany each application for a seasonal outdoor seating permit.
 - (4) Term of permit. A seasonal outdoor seating permit for a Right-of-Way Seating Area is limited to a period beginning March 1 through November 30 of each calendar year. A seasonal outdoor seating permit for a Public Shared Parking Seating Area or a Sidewalk Seating Area is limited to one calendar year ending on December 31st. Permits will have to be applied for on an annual basis and will not automatically renew.
 - (5) Fees for use of public sidewalk, public right-of-way, or public share parking shall be ten dollars (\$10.00) per square foot per term.
- (c) *Limitations on right-of-way seating areas.* An eating establishment shall be limited to the permitted use of two (2) public parking spaces per

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establishment. At any one time, the town shall limit the total number of issued permits for right-of-way seating areas to no more than twenty percent (20%) of the total parking spaces along a street block. Permits will be issued based on the order of complete applications received.

- (d) *Limitations on use of public shared parking.* An eating establishment shall be limited to the permitted use of two (2) public shared parking space per establishment, however the use of public shared parking spaces can only be used for seasonal outdoor seating if the parking spaces have not been allocated through the public shared parking program pursuant to Sec. 78-100.7 of the zoning ordinance.

If as described in Sec. 66-137(b)(1)f, a development applicant has voluntarily proffered or chosen to participate in the public shared parking program and the only remaining spaces are occupied by an eating establishment pursuant to this division, the director of public works shall provide written notice to the principal operator and owner of the property

- (e) *Liability insurance and indemnity.* Prior to approval of any seasonal outdoor seating permit, the applicant shall submit a certificate of liability insurance in such amounts and such coverages as may be required by the risk manager, naming the Town of Herndon as an additional insured in a form satisfactory to the risk manager.
- (f) *Fees and taxes to be paid.* All Town of Herndon fees and taxes required by law and applicable to the eating establishment, or to the property on which the eating establishment is located, shall be paid in full and all required town licenses shall be current prior to approval of a seasonal outdoor seating permit.
- (g) *Encroachment Agreement.* Prior to the approval of a seasonal outdoor seating permit the applicant shall submit an executed encroachment agreement, incorporating all terms and conditions imposed by town staff and in a form approved by the town attorney or their designee, which shall include but not be limited to provisions regarding insurance and indemnification as may be required by the risk manager.

Sec. 66-134. Seasonal Outdoor seating permit; review process.

- (a) After a complete application, including all required materials as set forth in Sec. 66-133 is submitted, the director of community development and the director of public works shall jointly approve the seasonal outdoor seating permit, approve the seasonal outdoor seating permit with conditions, or deny the seasonal outdoor seating permit.

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(b) Standards for application review. Approval of a seasonal outdoor seating permit shall be granted only if:

- (1) The eating establishment is properly licensed and lawfully located in a PD-TD, Planned Development Traditional Downtown, PD-D, Planned Development Downtown, or CC, Central Commercial zoning districts;
- (2) The proposed seasonal outdoor seating complies with the uniform statewide building code, state and local fire codes, state and local health codes, and all applicable provisions of federal, state, and local law, including this division;
- (3) The proposed seasonal outdoor seating complies with all Seasonal Outdoor Seating Requirements;
- (4) The public sidewalk maintains 60 inches passage way to back of curb and 36 inch passage around any sidewalk obstruction;
- (5) The eating establishment complies with ADA requirements for the indoor and outdoor seating areas. This includes required ADA access within the outdoor seating area;
- (6) The proposed outdoor seating will not unreasonably interfere with the normal use of town property by the town or general public, and does not present a safety, health, or environmental hazard; and
- (7) The proposed outdoor seating area shall not block egress from the adjacent buildings, block or hinder access to any fire hydrant, fire lane or fire department hose connection.

(c) Availability of approved permit on the premises. If approved, the seasonal outdoor seating permit shall be available on the premises of the eating establishment at all times and shall be provided to representatives of the town upon request.

Sec. 66-135. Seasonal outdoor seating permit; changes to approved permit.

No material change to an approved seasonal outdoor seating permit shall be made without prior written approval by the director of community development and the director of public works, provided that the director of public works may modify an approved permit if they find there is a public need relative to use of the adjacent sidewalk area or right-of-way.

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Sec. 66-136. Seasonal outdoor seating permit; duration and transferability.

- (a) A seasonal outdoor seating permit for a Right-of-Way Seating Area shall be valid from March 1 to November 30 per calendar year, unless a shorter time is specified. A seasonal outdoor seating permit for a Public Shared Parking Seating Area or a Sidewalk Seating Area is limited to one calendar year ending on December 31st, unless a shorter time is specified. A seasonal outdoor seating permit shall be valid until the time stated in the permit, the establishment ceases operation, the permit is suspended, or the permit is revoked.
- (b) A seasonal outdoor seating permit shall not be transferable to another principal operator or location.

Sec. 66-137. Seasonal outdoor seating permit; enforcement, revocation and suspension.

- (a) *Generally.* Operation of seasonal outdoor seating is a licensed privilege granted by the Town of Herndon to occupy a portion of the public right-of-way or public shared parking and is predicated on the seasonal outdoor seating being operated in compliance with all applicable regulations and on maintaining the superseding public interest in the use of public rights-of-ways in the town and shall be revocable at the pleasure of the town council.
- (b) *Administrative revocation of approved permit by the director of public works.*
 - (1) The director of public works shall have the authority to revoke an approved seasonal outdoor seating permit if any of the following occurs:
 - a. The applicant has misrepresented facts or provided false information in the seasonal outdoor seating permit application;
 - b. The outdoor seating area is operated in violation of the terms or conditions of the outdoor seating permit, encroachment agreement or, ABC regulations;
 - c. The outdoor seating area or the eating establishment is operated in violation of the zoning ordinance, town code, or other applicable federal, state or local law;

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- d. The outdoor seating area constitutes a public nuisance or a hazard to the public health, safety, or welfare of the public, or is endangering the life or property of others;
 - e. The eating establishment has delinquent taxes, unpaid fees, or has not maintained all licenses necessary for operation of the eating establishment and outdoor seating area; or
 - f. The director of public works determines that there is a superseding public need relative to the portion of the public sidewalk, public right-of-way, or public shared parking space(s) occupied by or otherwise affected by the outdoor seating, including but not limited to: 1) work or repair in the public sidewalk or public right-of-way areas, or 2) need of access for work or repair to a public facility or public utility or 3) if a development applicant has voluntarily proffered or chosen to participate in the public shared parking program and the only remaining spaces are occupied by outdoor seating.
- (2) The director of public works shall provide written notice that shall be reasonable under the circumstances to the principal operator and owner of the property where the eating establishment is located setting forth the effective date of the revocation and the grounds therefor. Such revocation shall not be appealable.
- (3) In the case of revocation of a seasonal outdoor seating permit on grounds other than specified in subsection (b)(1)f of this subsection, the principal operator of the seasonal outdoor seating shall not be permitted to re-apply for an administrative seasonal outdoor seating permit to operate an outdoor seating area for the same establishment within one year of revocation.
- (c) *Administrative suspension of an approved permit by the director of public works.*
- (1) The director of public works shall have the authority to suspend an approved outdoor seating permit for a period of up to 30 days, or such longer period as may be necessary, if any of the conditions of subsection (b)(1) occur.
 - (2) The director of public works shall provide written notice to the principal operator setting forth the effective date of the suspension, the length of the suspension, and the grounds therefor.

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- (3) The director of public works may reinstate a seasonal outdoor seating permit if the director is satisfied that the grounds for the suspension have been abated.

Sec. 66-138. Seasonal outdoor seating permit; marking of outdoor seating area for inspection.

After approval of a seasonal outdoor seating permit and prior to initial occupancy of any area approved for use for outdoor seating, the principal operator of the outdoor seating shall mark the corners of the approved outdoor seating area in a conspicuous but non-permanent manner on the sidewalk surface or other public space and shall notify the director of public works for inspection by the town building official and approval of the same.

Secs. 66-139 - 66-150. - Reserved.

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

14. Resolution 22-G-30, to approve a Temporary License Agreement between the Town and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce for use of Town-owned property for portable toilets and an ice machine for Friday Night Live events.

A Certificate of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, April 15, 2022 issue.

Mayor Olem recognized Lauri Sigler, Deputy Town Attorney, who presented the staff report dated April 19, 2022, which is on file in the Town Clerk's office. Ms. Sigler reviewed the agreement between the town and the Dulles Chamber, specifically for the period of Friday Night Live. It would run from approximately May 6 to August 26 and was for the placement of the Chamber's personal property on town property, namely an ice machine and portable toilets. The change from the work session was that Chamber had presented the town with a signed license agreement. 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 Regan, Lesa Yeatts, Town Attorney, stated that the Code of Virginia required the locality's governing body to vote on the use public property.

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

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(public hearing)**

On motion of Councilmember Friedrichs, seconded by Councilmember Regan, and carried by unanimous roll call vote, Resolution 22-G-30 was approved as presented. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Resolution 22-G-30, to approve a Temporary License Agreement between the Town and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce for use of Town-owned property for portable toilets and an ice machine for Friday Night Live events.

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

1. The Town Council approves a temporary license agreement dated April 26, 2022 between the Town of Herndon (Town) as licensor and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce (the Chamber) as licensee. The license allows the Chamber to use designated town-owned property in the Herndon Municipal Center parking lot for placement of portable toilets and designated town-owned property in the Herndon Municipal Center parking garage for placement of an ice cooler machine for Friday Night Live events on May 6, 13, 20, 27, June 10, 17, 24, July 1, 8, 15, 22, 29, August 5, 12, 19, 26 of 2022.
2. The Mayor is authorized to sign and deliver this license agreement and any other instrument to evidence or support the license agreement

[Note: Attached for reference is the Temporary License Agreement dated April 26, 2022 between the Town and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce.]

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(public hearing)**

TEMPORARY LICENSE AGREEMENT

This Agreement ("Agreement") is made this 26th day of April 2022 by and between DULLES REGIONAL CHAMBER OF COMMERCE d/b/a Herndon Chamber of Commerce, a Virginia corporation ("Chamber") and the TOWN OF HERNDON, VIRGINIA, a municipal corporation ("Town").

WHEREAS Chamber represents that they have a Special Event Contract to conduct Friday Night Live events in the Town of Herndon on May 6, 13, 20, 27, June 10, 17, 24, July 1, 8, 15, 22, 29, August 5, 12, 19, 26 of 2022 and that Chamber desires to use the Town's property for placement of portable toilets and an ice cooler machine;

WHEREAS the Town desires to permit the use of the Town's property for placement of portable toilets and an ice cooler machine on these dates.

Now therefore, the parties agree as follows:

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

Insurance limits shall not be less than the following amounts:

Commercial General Liability – Combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate. Policy shall be endorsed to name the Town as an additional insured.

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

7. Ice cooler machine hasp/lock shall be repaired and maintained in good condition so that the doors are properly secured when cooler is not supervised.
8. Portable Toilets shall be secured to Town property in such a manner as to maximize their safe use while also trying to minimize risk of tip over. In the case of a tip over, the Chamber will make every reasonable effort to ensure the portable toilet is replaced and clean-up of spills occurs in a timely manner. The Chamber shall make every reasonable effort to ensure that portable toilets are serviced in a timely manner
9. Termination: The Town may terminate this Agreement upon 24 hours' notice to Chamber for cause.
10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.
11. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

ATTEST:

Amanda M. Ketz
Town Clerk, Acting

APPROVED AS TO FORM:

Lesa J. Yeatts
Lesa J. Yeatts, Town Attorney



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

By John P. Boylan
Name: John P. Boylan
Title: Pres & CEO

TOWN OF HERNDON, VIRGINIA

Sheila A. Olem
Sheila A. Olem, Mayor

**April 26, 2022
(public hearing)**

GENERAL

15. Resolution 22-G-28, to amend the Chestnut Grove Cemetery Fee Schedule.

[Note: This item was continued from the April 12, 2022 public hearing]

There were brief comments from Council on this item.

On motion of Vice Mayor del Aguila, seconded by Councilmember Friedrichs, and carried by unanimous roll call vote, Resolution 22-G-28, to amend the Chestnut Grove Cemetery Fee Schedule, was approved. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Resolution 22-G-28, to amend the fee schedule for the Chestnut Grove Cemetery.

WHEREAS, the Town Council of the Town of Herndon, Virginia, has established the established fees for the Chestnut Grove Cemetery; and

WHEREAS, with the continuing decrease in burial sites during the past several years, and the need for additional funding support to maintain the cemetery enterprise fund operations, fee adjustments are recommended; and

WHEREAS, it is recommended that the fees be modified as follows:

SITES	Current Fees	Proposed Fees
Lots 1 through 605 (older section)	\$ 3,295	3,795
Lots 606 through 999 (Sec.7-back)	3,295	3,795
Lots 2200 through 2226	3,695	4,195
Lots 3300 through 3335	3,695	4,195
Lots 4200 through 4246	3,695	4,195
Lots 5200 through 5217	3,695	4,195
Park/Infant-Child	975	975
<i>Estate Lots</i>		
Interment Rights (6)	35,995	35,995
Interment Rights (4)	23,995	23,995
<i>Mausoleum (including bronze crypt plate)</i>		
Level 1 & Level 4	5,695	5,695
Level 2 & Level 3	6,195	6,195
<i>Cremation Sites</i>		
Land Cremation Sites Non-Park		
Single	2,700	3,000

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Land Cremation Sites Park		
Single	2,700	3,000
Columbaria 3, 4, 5 & 6 (including memorial plate)		
Single	3,250	3,850

INTERMENTS

Weekdays before 2:00 p.m.		
Adult	1,695	1,895
Infant/Child	495	495
Cremation (Ground Burial)*	1,095	1,295
Columbarium*	1,095	1,295
Mausoleum*	1,895	2,095

**Includes tent and chairs*

Current Fees Proposed Fees

<i>Additional Fees for Interment</i>		
Weekdays after 2:00 p.m.	500	500
Saturdays	500	700
Sundays & Holidays	750	1,000

Current Fees Proposed Fees

<i>Additional Rights of Interment</i>		
Traditional Site	1,700	2,000
Cremation Site	1,300	1,500

GENERAL SERVICE FEES

Disinterment	3,000	4,000
Deed Transfer	175	175
Tent & Chair Rental	450	450
Memorial Permit Fee	125	175

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby amends the Chestnut Grove Cemetery Fee Schedule and directs the Chestnut Grove staff to implement the amended fee schedule effective July 1, 2022.

16. Resolution 22-G-29, to amend the Herndon Centennial Golf Course Fee Schedule.

[Note: This item was continued from the April 12, 2022 public hearing]

Resulting from the Council's April 19 work session discussion, Mayor Olem stated that staff provided Council with a revised resolution dated and distributed April 26. Copies were posted on Granicus and were made available for the public.

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

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In response to queries from Councilmember Dhakal, the Town Manager briefly outlined the revised resolution, which incorporated lower resident rates. He had rounded the proposed discounted resident rate to 25 percent, so the rates would go up slightly, but not by a lot.

Councilmember Regan moved approval of the revised Resolution 22-G-29, as discussed at the April 19 work session, dated and distributed on April 26, 2022, as follows:

- **REVISE** the fourth “**WHEREAS**” paragraph to read:

“**WHEREAS**, in accordance with established policy, town residents are provided a ~~ten percent (10%)~~ **twenty-five percent (25%)** discount off the green fees rounded to the nearest dollar amount...”

Motion seconded by Councilmember Alam.

There were brief comments from Council.

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

Resolution 22-G-29, to amend the Herndon Centennial Golf Course Fee Schedule.

- WHEREAS**, the Town Council of the Town of Herndon, Virginia, has established fees for the Herndon Centennial Golf Course; and
- WHEREAS**, the Herndon Centennial Golf Course is an enterprise fund operation and must generate sufficient revenues to meet all personnel, operating, capital and debt service expenses; and
- WHEREAS**, it is the intent of the town council to remain competitively priced relative to other area public golf courses, yet fair to town citizens; and
- WHEREAS**, in accordance with established policy, town residents are provided a ~~ten percent (10%)~~ **twenty-five percent (25%)** discount off the green fees rounded to the nearest dollar amount; and
- WHEREAS**, the town manager or the town manager’s designee may increase or decrease rates during peak or non-peak times or during various weather conditions to not exceed more than ten percent (10%) of the rate; and

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WHEREAS, staff recommends that the town council adopt the amended fees proposed below to the Herndon Centennial Golf Course fee schedule.

Green Fees

	<u>Current</u>	<u>Proposed</u>
Weekday (18 holes)	\$34.00	\$38.00
Weekday (9 holes)	\$25.00	\$27.00
Weekend (18 holes)	\$49.00	\$54.00
Weekend (9 holes)	\$30.00	\$34.00
Weekday Sr. /Jr. (18 holes)	\$27.00	\$32.00
Weekday Sr. /Jr. (9 holes)	\$19.00	\$22.00

Cart Fees*

	<u>Current</u>	<u>Proposed</u>
18 holes (per person)	\$16.98	\$18.87
9 holes (per person)	\$11.28	\$13.21

* Cart fees are before tax amounts. Six percent (6%) sales tax will be charged on cart fees.

Annual Passes

	<u>Current</u> <u>5 day/ 7 day</u>	<u>Proposed</u> <u>5 day/7 day</u>
Mon.-Fri. Annual Pass	\$1,300/\$2,000	\$1,450/\$2,200
Senior Mon.-Fri. Annual Pass	\$1,175	\$1,300
Junior Mon-Fri. Pass (New)	N/A	\$900

Twilight Rates discounted \$6.00 after 3 p.m. and \$15.00 after 6 p.m.
Weekend Rates start Fridays at 12:00 p.m.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby amends the Herndon Centennial Golf Course fee schedule and directs staff to implement the amended fee schedule effective upon adoption.

CONSENT

17. **Resolution 22-G-31, to consider an extension of Special Exception SE #21-01, 400 Herndon Parkway, Peppertree Montessori & Preschool, to permit a private school/daycare within an existing office building.**

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

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Resolution 22-G-31, to consider an extension of Special Exception, SE #21-01, 400 Herndon Parkway, Suite 150, Peppertree Montessori & Preschool, to permit a private school/daycare within an existing office building.

WHEREAS, the applicant, Gwendolyn Dozier, Peppertree Montessori, has received a special exception to permit a private school/daycare within an existing office building located at 400 Herndon Parkway and further identified as Fairfax County Tax Map # 0171-06-F3; and

WHEREAS, the applicant has submitted a request for extension of the approved special exception in accordance with Section 78-155.3(g) of the zoning ordinance, which allows the town council to extend the approval a further six months (October 27, 2022); and

WHEREAS, the Town Council finds that the extension as requested is made with good cause.

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

Approves the extension of Special Exception SE #21-01, with all of the conditions of the original approval, dated April 27, 2021.

**Conditions approved April 27, 2021
by Resolution 21-G-41
[inserted below]**

Approves Special Exception Application SE #21-01, in accordance with the conditions set forth below to achieve compliance with the standards found in Section 78-155.3:

1. **Substantial Conformity.** The development and maintenance of the special exception use for a Montessori school and daycare pursuant to Section 78-71.2 of the Herndon Zoning Ordinance (the "Zoning Ordinance") shall be in substantial conformance with the SE #21-01 application materials submitted January 22, 2021 and concept plan dated March 5, 2021 (the "Concept Plan"). Approval of this application on the parcel identified as Fairfax County Tax Map Number 0171-06-F3, known as 400 Herndon Parkway, Herndon, Virginia (the "Property"), shall not relieve the applicant or the owners of the Property, or their successors or parties developing, establishing, or operating the approved special exception, from the obligation to comply with and conform to any other Zoning Ordinance, codified ordinance, or regulatory requirement.

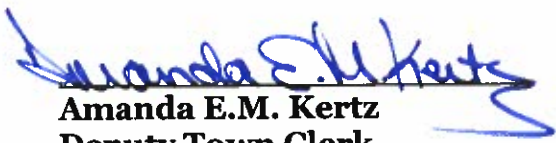
**April 26, 2022
(public hearing)**

2. Child & Pick-Up & Drop-Off. Child pick-up and drop-off shall occur in the 10 marked parking spaces located in front of the entrance to the Montessori & preschool, as shown on the special exception plan dated March 5, 2021.
3. Number of Permitted Children. The number of children present on site shall not exceed 50 at any one time.
4. Outdoor Recreation Area. An outdoor, fenced playground area, no less than 1,000 square feet, shall be constructed in the approximate location as shown on the Concept Plan, prior to the issuance of a business license or final certificate of occupancy. When playing outside, all children shall be within the fenced recreation area. There shall be a minimum of two staff members supervising the children while in the outdoor recreation area. If the number of staff required by the Virginia Department of Social Services is greater than two, then that shall be the minimum number of staff required.
5. Number of Permitted Children in Outdoor Recreation Area. The maximum number of children permitted in the outdoor recreation area at any one time shall comply with Section 78-71.2(d)(2)(b) of the zoning ordinance, which requires 100 square feet for per child.
6. Zoning Inspection Permit and Inspections. A Zoning Inspection Permit is required prior to issuance of the business license. Following the business license, the use shall be inspected by zoning and building officials during reasonable hours and upon reasonable prior notice.

ADJOURNMENT

Councilmember Friedrichs moved to adjourn the meeting of the April 26, 2022 public hearing at 9:58 p.m., and Vice Mayor del Aguila seconded the motion. The question was called on the motion which carried by unanimous roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."


Sheila A. Olem
Mayor


Amanda E.M. Kertz
Deputy Town Clerk



Minutes approved by Town Council: August 9, 2022