



TOWN COUNCIL MEETING AGENDA

Town Council Chambers
765 Lynn Street, Herndon, VA 20170
Tuesday, February 28, 2023 | 7:00 p.m.

1. Call to Order

2. Pledge of Allegiance to the Flag of the United States of America

3. Presentations/Reports/Comments

- a. Town Manager Report
- b. Councilmember Comments

4. Comments from the Audience

Members of the public may, for one 3-minute period, provide public comments, requests, consent or general item comments, and comments on matters not included on the agenda.

5. Public Hearings

- a. Ordinance 23-O-04 to consider amending the Fiscal Year (FY) 2023 Adopted Budget for the budgets of the General Fund, Golf Fund, Water and Sewer Fund, and American Rescue Plan Act (ARPA) Fund
- b. Ordinance 23-O-05 to consider zoning ordinance text amendment, ZOTA #22-01, to amend Chapter 78 (ZONING), Article XIV (Signs), Section 78-141.4 (Sign Standards for Commercial Districts), and Section 78-180 (Definitions), to revise the regulations governing the maximum number of freestanding signs permitted with a drive-through use

6. Consent

- a. Ordinance 23-O-06 to approve and authorize the Mayor to sign a three year lease agreement between Town of Herndon and The Elden Street Players d/b/a NextStop Theatre Company, for space at 717 Lynn Street, commonly known as the Depot
- b. Resolution 23-G-22 to approve an Interjurisdictional and Cooperative Agreement for Organic Material Disposal with Prince William County
- c. February 7, 2023 Town Council Work Session Minutes
- d. February 14, 2023 Town Council Meeting Minutes
- e. February 16, 2023 Special Joint Town Council/Planning Commission Work Session Meeting Minutes

7. Adjournment

TOWN OF HERNDON, VIRGINIA

ORDINANCE

FEBRUARY 28, 2023

Ordinance - to amend the Fiscal Year (FY) 2023 Adopted Budget for the General Fund, Golf Fund, Water & Sewer Fund, and American Rescue Plan (ARPA) Fund.

Recital

In adopting this ordinance, the Town Council has considered the Town Manager's recommended budget modifications as described in Attachment A, FY 2023 Budget Amendment Number 2.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that the financial adjustments to the FY 2023 budget, as described in Attachment A, FY 2023 Budget Amendment Number 2 to this ordinance, are hereby approved. This ordinance shall be effective on and after the date of its adoption.

TOWN OF HERNDON, VIRGINIA
FY 2023
BUDGET AMENDMENT NUMBER 2

The following appropriations and revenue sources are proposed for amendment:

GENERAL FUND

Expenditure Appropriations	Amount	Revenue Budget	Amount
Increase Public Works expenditures	\$ 861,179	Increase proffer, State grants and pass-through revenues	\$ 834,507
Increase Police Department expenditures	262,300	Use of Vacancy Savings and favorable interest income	676,244
Increase Community Development expenditures	471,450	Increase Insurance Recoveries Revenue	222,922
Other Departments expenditures	10,773	Unclaimed Property revenue	7,029
Personnel	135,000		
Total Expenditures Increase	\$ 1,740,702	Total Revenues Increase	\$ 1,740,702

GOLF FUND

Expenditure Appropriations	Amount	Revenue Budget	Amount
Increase Golf Course operating expenses	\$ 130,000	Increase Green Fees revenue	\$ 160,000
Increase in Products for Resale expenditures	30,000	Use of Fund Net Position	700,000
Master Plan project	700,000		
Total Expenditures Increase	\$ 860,000	Total Revenues Increase	\$ 860,000

WATER/SEWER FUND

Expenditure Appropriations	Amount	Revenue Budget	Amount
Imposed Cost Increases	\$ 240,000	Use of Current and future rates	\$ 240,000
Total Expenditures Increase	\$ 240,000	Total Revenues Increase	\$ 240,000

AMERICAN RESCUE PLAN ACT (ARPA)

Expenditure Appropriations	Amount	Revenue Budget	Amount
HCC Back Log (Maint & Repair)	\$ 500,000	ARPA – Fund Balance	\$8,242,509
Tennis Courts & Bubble	520,000		
Ball/Sports Field & Park Improv	212,000		
Park Equipment Replacement	300,000		
HPD Parking Lot Expansion	250,000		
HMC Backlog (Maint & Repair)	970,509		
1479 Backlog (Town Shop)	10,000		
Fire Alarm System at HMC - <i>adjusted</i>	(905,000)		
Sewer Pump Station - <i>removed</i>	(1,480,000)		
Folly Lick Sewer Improv - <i>removed</i>	(1,116,000)		
Vehicle Replacement	1,500,000		
Water Pump Station and Vaults *	1,480,000		
Old Town Hall, Caboose, Depot *	250,000		
Underground Storage Tank*	500,000		
Sewer Pipe Lining*	500,000		
HPD CMS*	250,000		
Water Master Plan*	1,800,000		
Water- Facility Security/Improve*	485,000		
Water Vehicle*	200,000		
Cemetery*	900,000		
Sewer Utility Master Plan*	1,116,000		
Total Expenditures Increase	\$ 8,242,509	Total Revenues Increase	\$ 8,242,509

**new project added*

TOWN OF HERNDON, VIRGINIA

ORDINANCE

February 28, 2023

Ordinance - to amend Chapter 78 (ZONING), Article XIV (Signs), Section 78-141.4 (Sign Standards for Commercial Districts), and Section 78-180 (Definitions), to revise the regulations governing the maximum number of freestanding signs permitted with a drive-through use.

Sec. 78-141.4. – Sign standards for commercial districts.

(b) *Projecting, parapet, internal, ~~and~~ light pole banner, and drive-through related signs.* Additional sign types are permitted in the commercial service (CS), commercial office (CO), planned development-business (PD-B), and office and light industrial (O&LI) zoning districts. The following standards apply.

TABLE 78-141.4(b):

STANDARDS FOR PROJECTING, PARAPET, INTERNAL, ~~AND~~ LIGHT POLE BANNER, *AND DRIVE-THROUGH RELATED* SIGNS IN COMMERCIAL DISTRICTS

Type	Projecting	Parapet	Internal	Light Pole Banners	<i>Drive-through related</i>
Number	1 per establishment frontage	Up to 2 per building	Up to 3 per primary building	No more than 35% of on-site light poles	<i>Up to 2 primary drive-through signs and up to 4 secondary drive-through signs</i>
Size	12 SF max.	150 SF max. per sign	24 SF max. per sign	6 SF max.	<i>24 SF maximum per sign for primary drive-through signs and 4 SF maximum per sign for secondary drive-through signs</i>

Height	N/A	N/A	If freestanding: 6' max; if wall: 10' max	Not to exceed height of pole	<i>Maximum 6' for primary drive-through signs and maximum 3' for secondary drive-through signs</i>
Location	Limited to ground floor; or 20' above normal grade whichever is less.	On parapet of multi-story buildings; and, when located in O&LI, 175' separation between signs located on same building elevation	At least 50' from any ROW	Limited to on-site light poles	<i>Minimum of 25' from the ROW for primary drive-through signs and minimum 5' for secondary drive-through signs</i>
Illumination	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	Indirect from site lighting	<i>Internally Lit, Halo-lit, or Indirect Lit</i>
Duration	Unlimited	Unlimited	Unlimited	No more than 3 continuous months, once a year	<i>Must be removed if drive-through use ceases</i>

Section 78-180. – Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section.

Sign related terms. The following definitions pertain to signs and signage in all zoning districts:

- (1) *A-frame sign.* A-Frame sign means a two-faced sign with supports that are connected at the top and separated at the base, forming an "A" shape. These are also referred to as "sandwich board" signs.
- (2) *Awning sign.* Awning sign means a sign placed directly on the surface of an awning.
- (3) *Blade sign.* Blade sign means a projecting sign that is vertically oriented and mounted on a wall perpendicular to the wall plane.
- (4) *Box sign.* Box sign means a wall sign designed with a cabinet that houses internal illumination and faced with a translucent panel containing the sign copy.
- (5) *Building frontage.* Building frontage means the length of the exterior wall of a building which physically encloses usable interior space and faces a public right-of-way.
- (6) *Canopy sign.* Canopy sign means a sign affixed on a canopy.
- (7) *Changeable copy sign.* Changeable copy sign means a sign or part of a sign that is designed so that characters, letters or illustrations can be changed or rearranged without altering the face or surface of the sign.
- (8) *Design guidelines.* Design guidelines mean the guidelines found in either the Historic District Overlay Guidelines, the Downtown Herndon Pattern Book or the Urban Design & Architectural Guidelines for the Herndon Transit-Oriented Core.
- (9) *Drive-through related sign.* A sign located on the same parcel as an establishment with a physical drive-through lane associated with the principal use. Drive-through signs are either primary or secondary.
- (9) (10) *Flag.* Flag means a piece of cloth or similar material, typically rectangle, attachable by one edge to a pole or rope.
- (10) (11) *Flashing sign.* Flashing sign means a sign that includes lights that flash, blink, or turn on and off intermittently.
- (11) (12) *Freestanding sign.* Freestanding sign means a sign that is supported by structures or supports in or upon the ground and independent of any support from any building or wall.
- (12) (13) *Illegal sign.* Illegal sign means any sign erected without a required permit or which otherwise does not comply with any provisions of this article.
- (13) (14) *Illuminated sign.* Illuminated sign means a sign that is halo-lit, internally lit, or indirectly lit, but does not include a neon sign.

- ~~(14)~~ **(15)** *Internal sign.* Internal sign means freestanding or wall signs that are located away from the right-of-way (more than 50 feet) on multi-tenant, multi-parcel, and multi-building commercial centers.
- ~~(15)~~ **(16)** *Master sign plan.* Master sign plan means a coordinated, comprehensive sign program for a multi-tenant commercial property or center that sets specific sign standards for that property or center.
- ~~(16)~~ **(17)** *Minor sign plan.* Minor sign means a wall or freestanding sign not exceeding two square foot in area and not illuminated or neon.
- ~~(17)~~ **(18)** *Moving sign.* Moving sign means a sign any part of which moves.
- ~~(18)~~ **(19)** *Neon sign.* Neon sign means a sign containing exposed tubes filled with light-emitting gas.
- ~~(19)~~ **(20)** *Nonconforming sign.* Nonconforming sign means any sign which was lawfully erected in compliance with applicable regulations of the Town and maintained prior to the effective date of this chapter of the zoning ordinance and which fails to conform to current standards and restrictions of the zoning ordinance.
- ~~(20)~~ **(21)** *Normal grade.* Normal grade means the grade at the edge of the adjacent public or private street.
- ~~(21)~~ **(22)** *Off-site sign.* Off-site sign means a sign that directs attention to a business, product, service or activity conducted, sold or offered at a location other than the premises on which the sign is erected.
- ~~(22)~~ **(23)** *Parapet sign.* Parapet sign means a wall sign installed on the parapet of a multi-story building.
- ~~(23)~~ **(24)** *Pole sign.* Pole sign means a sign that is mounted on one or more freestanding poles.
- ~~(24)~~ **(25)** *Projecting sign.* Projecting sign means any sign, affixed to a building, supported only by the wall on which it is mounted, and oriented perpendicular to the wall plane on which it is anchored.
- ~~(25)~~ **(26)** *Raceway transformer.* Raceway transformer means a running electrical transformer box affixed to and housing the circuitry for internally illuminated wall signs.
- ~~(26)~~ **(27)** *Review board.* Review board means either the architectural review board or the historic district review board.
- ~~(27)~~ **(28)** *Roof sign.* Roof sign means a sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.
- ~~(28)~~ **(29)** *Sign.* Sign means any word, numeral, figure, design, trademark, flag, pennant, twirler, light, display or other device of any kind which, whether singly or in any combination, is used to attract attention, direct, identify, inform, persuade, advertise for the purpose of visually attracting attention of the public while viewing the sign from outdoors.

~~(29)~~ **(30)** *Sign face*. Sign face means the portion of a sign structure bearing the message.

~~(30)~~ **(31)** *Sign structure*. Sign structure means any structure bearing a sign face.

~~(31)~~ **(32)** *Temporary sign*. Temporary sign means any sign intended to be displayed for a limited period.

~~(32)~~ **(33)** *Vehicle or trailer sign*. Vehicle or trailer sign means any sign attached to or displayed on a vehicle, if the vehicle or trailer is used for the primary purpose of advertising a business establishment, product, service or activity. Any such vehicle or trailer shall, without limitation, be considered to be used for the primary purpose of advertising if it fails to display current license plates, inspection sticker, or municipal decal, if the vehicle is inoperable, if evidence of paid-to-date local taxes cannot be made available, or if the sign alters the standard design of such vehicle or trailer.

~~(33)~~ **(34)** *Wall sign*. Wall sign means any sign attached to a wall or painted on or against a flat vertical surface of a structure.

~~(34)~~ **(35)** *Window sign*. Window sign means any sign visible outside the window and attached to or within 18 inches in front of or behind the surface of a window or door.

~~(35)~~ **(36)** *Wind sail sign*. Wind sail sign means a lightweight, portable sign mounted along one edge on a single, vertical, flexible pole the physical structure of which may resemble a sail, bow, feather, or teardrop.



**WALSH COLUCCI
LUBELEY & WALSH PC**

Kelly A. Posusney
Land Use Planner
(703) 528-4700 Ext. 5471
kposusney@thelandlawyers.com

November 8, 2022

By Email and Hand Delivery

Elizabeth M. Gilleran, AICP
Director of Community Development
Town of Herndon
777 Lynn Street, 2nd floor
Herndon, Virginia 20172-1427

Re: Proposed Zoning Ordinance Text Amendment
Table 78-141.4(b) – Drive-Through Signage in Commercial Districts
Applicant: Pollo Campero of Virginia, LLC

Dear Ms. Gilleran:

On behalf of the Applicant, please accept this letter as a request for consideration of a Zoning Ordinance Text Amendment (“ZOTA”) pursuant to Section 78-155.2 of the Town of Herndon Zoning Ordinance (the “Ordinance”).

Pollo Campero is currently processing a site plan to construct a new 2,991 square foot restaurant on Tax Map Parcel 16-1 ((405)) 9B, known as 1131 Elden Street, and located in the Commercial Services (“CS”) Zoning District. On March 23, 2021, the Town Council approved Special Exception Application SE #20-01, subject to development conditions, to permit an eating establishment with drive-through service use at 1131 Elden Street.

During the review of the site plan, the Applicant discovered that the Zoning Ordinance does not allow for certain signage typically found with a restaurant with drive-through use, such as menu boards and illuminated directional signs. As such, Pollo Campero requests consideration to amend Table 78-141-4(b) of the Ordinance to permit additional freestanding signs and illuminated minor signs for drive-through service uses in commercial districts. Proposed additions to Table 78-141-4(b) are highlighted in Exhibit A.

The request, if approved, will address the need for adequate signage to support eating establishment with drive-through service uses. The provision of adequate signage is in the Town’s interest since it promotes viable business endeavors which, in turn, result in economic vibrancy and substantial tax revenue.

ATTORNEYS AT LAW

703 528 4700 ■ WWW.THELANDLAWYERS.COM
2200 CLARENDON BLVD. ■ SUITE 1300 ■ ARLINGTON, VA 22201-3359

LOUDOUN 703 737 3633 ■ PRINCE WILLIAM 703 680 4664 ■ WINCHESTER 540 667 4912

Section 78-155.2(g) Standards for Zoning Text Amendments

Section 78-155.2(g) of the Town Code lists certain factors that should be considered when deciding whether to grant a Zoning Text Amendment. Each standard for a Zoning Text Amendment is listed in bold below, followed by the Applicant's response in italics:

1. Comprehensive plan compliance: Consistent with the comprehensive plan.

There are no specific Comprehensive Plan references that apply to this request; however, a general goal of the Town Council is to promote a healthy mix of commercial land uses that brings to the town economic vibrancy and substantial tax revenue.

2. Meets regulations: Free of conflict with any provision of this chapter, related town regulations, or any other applicable local, state, or federal laws and regulations.

This request, if approved, will be free of conflict with any provision of the Town Code, related town regulations, and any other applicable local, state, or federal laws and regulations.

3. Change in conditions. Changed conditions justify an amendment.

As stated previously, during the review of the site plan, it was discovered that the Zoning Ordinance does not allow for certain signage universally found with a restaurant with drive through use, such as menu boards and illuminated directional signs. Apparently, the omission of these types of signs was an oversight the last time the sign regulations were amended. This text amendment will address the need for adequate signage to support eating establishment with drive-through service uses.

4. Demonstrated community need: Addresses a demonstrated community need.

The community needs a variety of retail services, including eating establishments with drive-through service. The recent pandemic amplified this need. For such uses to be viable and serve the community, they need proper signage. This amendment will ensure drive-through uses such as Pollo Campero can be successful.

5. Consistent with purpose and intent of districts: Consistent with the purpose and intent of the zoning districts in this chapter, or will improve compatibility among uses and will ensure efficient development within the town.

The provision of adequate signage is consistent with the purpose and intent of the CS zoning district.

6. Promotes orderly development: Results in a logical and orderly development pattern consistent with accepted or emerging planning practices.

The provision of adequate signage assists with the logical and orderly development pattern consistent with accepted or emerging planning practices.

- 7. Avoids adverse impacts: Avoids adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.**

The provision of adequate signage has no impact, positive or adverse, on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

- 8. Adequate facilities and utilities: Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).**

The provision of adequate signage has no impact to a development's adequate service by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).

As required, please find enclosed a check in the amount of \$250 for the processing of this Zoning Ordinance Text Amendment request. Pollo Campero looks forward to working with you on this request. Please let me know if you need any additional information.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.



Kelly A. Posusney
Land Use Planner

cc: Fabiola Suarez
Jeff Smith

Exhibit A: Table 78-141.4(b) with Revisions Highlighted

A1086364.DOCX / 1 ZOTA - Statement of Justification 008922 000003

TOWN OF HERNDON, VIRGINIA

ORDINANCE

FEBRUARY 28, 2023

Ordinance – to approve and authorize the Mayor to sign a three year lease agreement between Town of Herndon and The Elden Street Players d/b/a NextStop Theatre Company, for space at 717 Lynn Street, commonly known as the Depot.

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

1. The Town Council approves a lease agreement dated February 28, 2023, by which the town would lease to The Elden Street Players space in the Depot located at 717 Lynn Street. The rent shall be \$1.00. The term shall be month-to-month from March 1, 2023 through February 28, 2025.
2. The Mayor is authorized to sign and deliver the lease agreement as described in paragraph 1 above and any related document necessary to evidence or effect the lease.
3. This ordinance shall be effective on and after the date of its adoption.

LEASE

THIS LEASE made on the 28th day of February 2023, by and between THE TOWN OF HERNDON, a municipal corporation (Landlord) and THE ELDEN STREET PLAYERS d/b/a NEXTSTOP THEATRE COMPANY (Tenant).

Recitals

Landlord is the owner of a building located at 717 Lynn Street, Herndon, Virginia, called the "Depot."

Landlord and Tenant have agreed that Tenant will lease from Landlord, in consideration of the rent, and under the terms and conditions specified here, the "Waiting Room" in the Depot, the "leased premises." The "Waiting Room" is shown as "A" on the plan entitled "Herndon Depot & Museum," dated December 8, 1980, attached and incorporated by reference. The reference on the plan to the use of the "Waiting Room" is not applicable.

THEREFORE, the parties agree as follows in consideration of the mutual benefits and burdens of this lease.

1. Commencement and Ending Date of Term. Beginning March 1, 2023, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may remain in the leased premises on a month-to-month basis with the Tenant having the right to terminate the Lease upon 30 days prior written notice to the Landlord, and the Landlord having the right to terminate the Lease upon 90 days prior written notice to the Tenant. In any event, the term of this lease shall expire February 28, 2025.

2. Rent. Tenant shall pay Landlord on demand \$1.00 rent.

3. Use of Premises. Tenant shall use the leased premises only as an office and

for the recreational events described in paragraph 5 of this Lease. Tenant shall not display any signs or advertising on the premises other than the one identification plate approved by the Landlord. Access to the restrooms in leased premises shall be shared with the Herndon Historical Society. Access to the Herndon Historical Society premises must remain locked. Tenant shall be responsible for maintaining the access to the Herndon Historical Society premises in a locked condition at all times. Tenant is aware that temporary use of the premises may be required during the Herndon Festival. Tenant and Landlord both agree to cooperate in this regard to make the premises available as needed during the Herndon Festival each year.

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

5. Recreational Programing Responsibility. Tenant shall, in conjunction with the Town of Herndon Parks and Recreational Department produce at least three performances on the Town Hall Square during the months of May to September each year.

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

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

additional insurance.

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

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

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

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

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

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

12. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any equipment in the leased premises in their existing condition.

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

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

14. Alterations and Improvements. Tenant shall not make or cause to be made any alterations to the leased premises without first obtaining Landlord's written consent.

15. Removal of Improvements and Restoration by Tenant. All alterations made by Tenant shall remain the property of Tenant for the term of the lease. Landlord and Tenant shall agree in writing prior to the installation of any fixture in which Tenant will retain title to the fixture at the expiration of the lease. If Tenant retains title, Tenant will remove the property at the expiration of the term of the lease and leave the leased premises in the same condition as at the commencement of the lease. If Landlord acquires title, the property will remain part of the leased premises and Tenant shall not have any obligation to remove it. Absent such written agreement, Landlord shall have the option upon expiration or termination of the term of this lease to retain the alterations as

a part of the leased premises, or to require Tenant to remove all the alterations and restore the leased premises to the same condition as at the commencement of the lease. If Tenant fails to remove such alterations and restore the leased premises as requested by Landlord, then Landlord may remove them and restore the leased premises and Tenant shall pay Landlord's costs as additional rent.

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

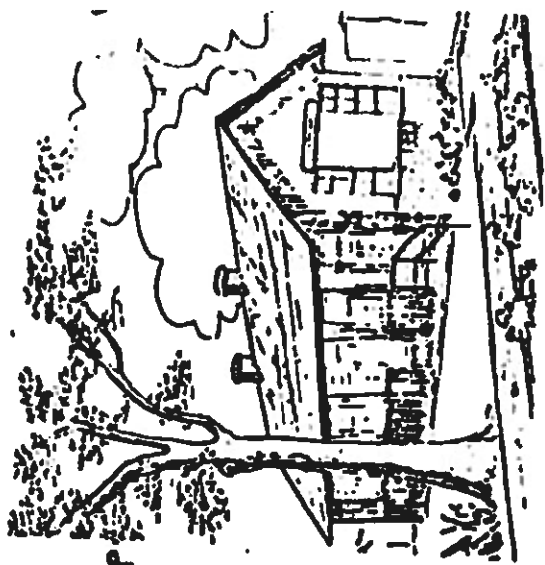
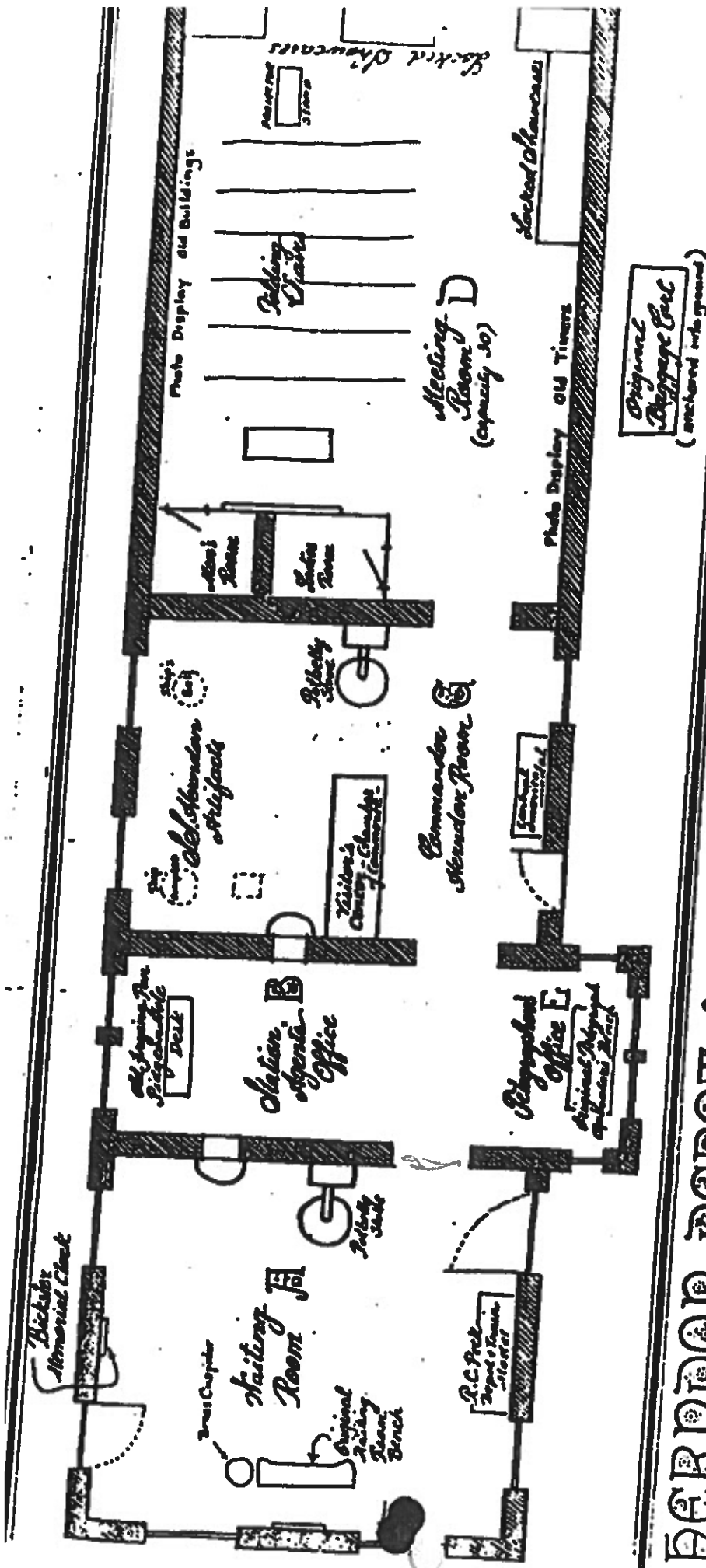
17. Right of Entry. Landlord shall have the right to enter the leased premises during normal business hours to examine the same upon reasonable notice, either oral or written. Landlord shall have the right to make such repairs, alterations, improvements or additions as may be reasonably necessary and to temporarily close doors, entryways, and other spaces and to interrupt or temporarily suspend utility and other building services and facilities, without the same constituting an eviction of Tenant in whole or in part.

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

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

22. Recitals. The recitals are part of this lease.

TOWN OF HERNDON, VIRGINIA	THE ELDEN STREET PLAYERS D/B/A NEXTSTOP THEATRE COMPANY
_____ Sheila A. Olem, Mayor	_____  Melody Fetske, President
ATTEST	APPROVED AS TO FORM
_____ Town Clerk	_____ Lesa J. Yeatts, Town Attorney



TOWN OF HERNDON, VIRGINIA

RESOLUTION

FEBRUARY 28, 2023

Resolution- to approve an Interjurisdictional and Cooperative Agreement for Organic Material Disposal with Prince William County

Pursuant to the authority granted by Code of Virginia §15.2-928, Prince William County is authorized to enter into interjurisdictional agreements to allow other localities to dispose of their organic waste at the County compost facility. The Town of Herndon and Prince William County have negotiated such an Agreement which was approved by the Prince William County Board of Supervisors on January 17, 2023.

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

1. The Town Council approves the Interjurisdictional and Cooperative Agreement for Organic Material Disposal between the Town and Prince William County, and
2. The Mayor is authorized to sign and deliver this agreement on such a form approved by the Town Attorney and any other instrument necessary to evidence or effectuate this agreement.

Attachment

INTERJURISDICTIONAL AND COOPERATIVE AGREEMENT
FOR ORGANIC MATERIAL DISPOSAL

This Interjurisdictional and Cooperative Agreement (“Agreement”) is between **Prince William County**, acting through the Prince William County Solid Waste Division (“PWC SWD”) and the **Town of Herndon**, (“Town”), collectively (the “Parties”) for the acceptance of yard waste/food scraps/soiled paper (“Organic Material”) at the Prince William County Balls Ford Road Compost Facility, 13000 Balls Ford Road Manassas, VA 20109 (“Compost Facility”).

The Parties agree as follows:

1. Term

The Term shall be five (5) years from the date of execution (“Execution Date”). Upon the expiration of the original term, the Agreement shall automatically renew for succeeding terms of one (1) year each unless either Party provides a sixty (60) days’ notice of termination to the other Party prior to the renewal date. Town may terminate this Agreement with sixty (60) days’ notice to PWC SWD. PWC SWD reserves the right to limit, suspend, or terminate this Agreement or acceptance of organic material after sixty (60) days’ notice to Town. Notwithstanding the forgoing, in the event of unforeseen emergency circumstances that significantly affect processing at the Compost Facility (such as, but not limited to, a fire at the Compost Facility), PWC SWD shall have the right to immediately suspend this Agreement and/or acceptance of organic material until such time as the emergency circumstances are resolved.

2. Delivery, Payments, and Pricing

All deliveries, billing and payments shall be done in accordance with the latest adopted Regulations for Prince William County Solid Waste Facilities, Rules of Operation for the Compost Facility, and the Yard Waste Fee Schedule, as amended from time to time. Invoicing shall occur on a monthly basis. Town is not required to deliver any specified or minimal amount of Organic Material to PWC SWD. In cases of limited processing capacity at the Compost Facility, such capacity will be available first to Organic Material from Prince William County, then any other jurisdictions with an existing agreement with PWC SWD, such as but not limited to Fairfax County and Arlington County, before capacity will be made available for Organic Material from the Town of Herndon.

3. Damages

Both Parties agree that neither Party will be responsible for damages caused by the negligence of the other Party, their employees or contractors.

4. Amendment

This Agreement may only be modified by written amendment, signed by both Parties.

5. Sovereign Immunity

Nothing in this Agreement shall be deemed a waiver of the sovereign immunity of any of the contributing member jurisdictions.

6. Applicable Law; Venue

This Agreement shall be construed, governed and interpreted by and in accordance with the laws of the Commonwealth of Virginia. Any litigation with respect to this Agreement shall be brought before a court of competent jurisdiction in the Commonwealth of Virginia.

7. Effective Date

This Agreement shall be effective upon the execution of the Parties. The date of execution will be the date of the last signature.

8. Authorized Signatory

Each individual signing this Agreement represents that he or she is authorized to bind the Party for whom he or she is signing and so acknowledges by executing below.

PRINCE WILLIAM COUNTY, VIRGINIA

By: _____

Printed Name: Thomas J. Smith

Title: Director of Public Works

Date: _____

TOWN OF HERNDON, VIRGINIA

By: _____

Printed Name: _____

Title: _____

Date: _____

SEEN AND AGREED: WOF NE FREESTATE PROJECT LLC

By: _____

Printed Name: _____

Title: _____

Date: _____

MOTION: BAILEY

**January 17, 2023
Regular Meeting**

SECOND: BODDYE

Res. No. 23-023

RE: APPROVE THE INTERJURISDICTIONAL AND COOPERATIVE AGREEMENT FOR ORGANIC MATERIAL DISPOSAL WITH THE TOWN OF HERNDON – BRENTSVILLE MAGISTERIAL DISTRICT

ACTION: APPROVED

WHEREAS, the County has owned a yard waste composting facility on Balls Ford Road since 1994 with the composting portion of the facility operated by a private company under contract to the County; and

WHEREAS, on January 20, 2015, by Resolution Number (Res. No.) 15-53, the Prince William Board of County Supervisors (Board) approved a “Service Agreement and License to Use Real Property Located at Prince William County’s Balls Ford Road Yard Waste Composting Site and Prince William County’s Landfill” (Service Agreement) with WOF NE Freestate Project LLC (Freestate) to construct and operate an organics management site at the Balls Ford Road Compost Facility; and

WHEREAS, the Service Agreement became effective on February 17, 2015, and Freestate took over operation of the Balls Ford Road composting site on July 1, 2015; and

WHEREAS, the Service Agreement with Freestate allows the company to accept organic waste at the Balls Ford Road Compost Facility that was generated outside Prince William County; and

WHEREAS, the County has interjurisdictional agreements in place with Fairfax and Arlington Counties, which allow these localities to deliver organic waste to the Balls Ford Road Compost Facility; and

WHEREAS, the Town of Herndon has requested a similar interjurisdictional agreement with the County to dispose of organic waste at the compost facility; and

WHEREAS, an Interjurisdictional and Cooperative Agreement for Organic Material Disposal (Agreement) between Prince William County, acting through the Public Works, Solid Waste Division, and the Town of Herndon has been prepared for the Board’s consideration; and

WHEREAS, the term of the Agreement is five (5) years from the date of execution and will automatically renew for succeeding terms of one (1) year unless either party provides a sixty (60) day notice of termination prior to the renewal date; and

January 17, 2023
Regular Meeting
Res No. 23-023
Page Two

WHEREAS, invoices will be issued monthly for waste delivered during the preceding month and disposal fees will be in accordance with the published fee schedule in the Rules of Operation for the Prince William County Balls Ford Road Compost Facility, as amended from time to time; and

WHEREAS, County residents and businesses, followed by other out-of-County entities that have existing agreements with the County, shall receive priority over the Town of Herndon if facility capacity is insufficient to meet the demand of all users; and

WHEREAS, pursuant to Code of Virginia Section 15.2-928, the Board has the legal authority to enter into agreements with other jurisdictions; and

WHEREAS, it is the recommendation of staff that the Board approve the Interjurisdictional and Cooperative Agreement for Organic Material Disposal with the Town of Herndon to allow the Town to deliver organic waste to the Balls Ford Road Compost Facility;

NOW, THEREFORE, BE IT RESOLVED that the Prince William Board of County Supervisors hereby approves the Interjurisdictional and Cooperative Agreement for Organic Material Disposal between Prince William County and the Town of Herndon;

BE IT FURTHER RESOLVED that the Prince William Board of County Supervisors hereby authorizes the Director of Public Works to sign the Interjurisdictional and Cooperative Agreement, in a final form, to be approved by the County Attorney's Office.

ATTACHMENT: Interjurisdictional and Cooperative Agreement for Organic Material Disposal between Prince William County and the Town of Herndon

Votes:

Ayes: Angry, Bailey, Boddye, Franklin, Lawson, Vega, Wheeler

Nays: None

Absent from Vote: None

Absent from Meeting: None

January 17, 2023
Regular Meeting
Res No. 23-023
Page Three

For Information:

County Attorney
Director of Finance
Director of Public Works
Assistant Director of Public Works for Solid Waste

ATTEST: _____

Andrea P. Madden

Clerk to the Board

INTERJURISDICTIONAL AND COOPERATIVE AGREEMENT
FOR ORGANIC MATERIAL DISPOSAL

This Interjurisdictional and Cooperative Agreement (“Agreement”) is between **Prince William County**, acting through the Prince William County Solid Waste Division (“PWC SWD”) and the **Town of Herndon**, (“Town”), collectively (the “Parties”) for the acceptance of yard waste/food scraps/soiled paper (“Organic Material”) at the Prince William County Balls Ford Road Compost Facility, 13000 Balls Ford Road Manassas, VA 20109 (“Compost Facility”).

The Parties agree as follows:

1. Term

The Term shall be five (5) years from the date of execution (“Execution Date”). Upon the expiration of the original term, the Agreement shall automatically renew for succeeding terms of one (1) year each unless either Party provides a sixty (60) days’ notice of termination to the other Party prior to the renewal date. Town may terminate this Agreement with sixty (60) days’ notice to PWC SWD. PWC SWD reserves the right to limit, suspend, or terminate this Agreement or acceptance of organic material after sixty (60) days’ notice to Town. Notwithstanding the forgoing, in the event of unforeseen emergency circumstances that significantly affect processing at the Compost Facility (such as, but not limited to, a fire at the Compost Facility), PWC SWD shall have the right to immediately suspend this Agreement and/or acceptance of organic material until such time as the emergency circumstances are resolved.

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PRINCE WILLIAM COUNTY, VIRGINIA

By: _____

Printed Name: Thomas J. Smith

Title: Director of Public Works

Date: _____

TOWN OF HERNDON, VIRGINIA

By: _____

Printed Name: _____

Title: _____

Date: _____

**SEEN AND AGREED:
WOF NE FREESTATE PROJECT LLC**

By: _____

Printed Name: _____

Title: _____

Date: _____