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**HERNDON TOWN COUNCIL**  
**Tuesday**  
**May 13, 2014**

The Town Council met in public session on Tuesday, May 13, 2014 at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street. In attendance were:

Mayor:

Lisa C. Merkel

Vice Mayor:

Connie Haines Hutchinson

Councilmembers:

C. Melissa Jonas

Dave A. Kirby

Sheila A. Olem

Charlie D. Waddell

Grace Han Wolf

Others present during the meeting were Arthur A. Anselene, Town Manager; Richard B. Kaufman, Town Attorney; Margie C. Tacci, Deputy Town Clerk II; Ron Thunman, Police Captain; Elizabeth M. Gilleran, Director of Community Development; Mary K. Tuohy, Director of Finance; Cindy S. Roeder, Director of Parks and Recreation; Robert B. Boxer; Director of Public Works; John Orrison, Building Official; Mark R. Holland, Zoning Administrator; and Dana Heiberg, Senior Planner.

The meeting was called to order at 7:00 p.m. with all members present and with Mayor Merkel presiding. Mayor Merkel invited forward the Herndon High School Varsity NJROTC Orienteering Team to lead the Pledge of Allegiance to the Flag of the United States of America.

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**May 13, 2014**  
**(public session)**

**1. APPROVAL OF MINUTES**

Councilmember Jonas moved approval of the minutes from the April 1 and April 15, 2014 work sessions and April 8, 2014 public hearing. This motion was seconded by Councilmember Kirby and carried by a unanimous vote. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell and Wolf, Vice Mayor Hutchinson and Mayor Merkel voting "Aye."

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**2. PRESENTATIONS**

**Certificates of Congratulations, 2013-2014 Herndon High School Varsity NJROTC Orienteering Team.**

Mayor Merkel stated that orienteering is a fast-paced sport that combines both off-path cross country running with land navigation using a maps or compasses. Competitors are given a map with the points they must find ~ in a certain order ~ after the clock starts for their run. She stated that this year, the team had an amazing season. They finished fourth overall at the Area 5 Orienteering Championship in December 2013 ~ qualifying for the two-day national competition in Georgia. The varsity team then rallied to finish third among the top 22 schools at the 2014 Navy National Championship, held February 8 and 9. She stated that the town was proud of the team and offered her congratulations.

Mayor Merkel called on Commander Richard Cassara; Coach Clay Wilkins; the members of the NJROTC Orienteering Team; and representatives from Herndon High School to join her, the Town Council, Town Manger and Town Attorney for the formal presentation.

Following the presentation, Coach Wilkins stated that the team has grown over the past few years and last year they were seventh in the country. He stated that he could not be more proud of his team.

Commander Cassara stated that he was glad he asked Mr. Wilkins to coach the team and offered his congratulations.

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TOWN OF HERNDON, VIRGINIA  
 CERTIFICATE OF CONGRATULATIONS  
 TO THE  
 2013-2014  
 HERNDON HIGH SCHOOL  
 VARSITY  
 NJROTC ORIENTEERING TEAM

For a phenomenal season; after finishing 4<sup>th</sup> overall at the Area Five Orienteering Championship in December 2013 ~ and qualifying for the two-day national competition in Georgia ~ the varsity team rallied to finish 3<sup>rd</sup> among the top 22 schools at the 2014 Navy National Championship, held February 8 & 9.

Presented by the Herndon Town Council on this 13<sup>th</sup> day of May, 2014.

/s/

Lisa C. Merkel, Mayor

**Proclamation, "Asian Pacific Heritage Month," May 2014.**

Councilmember Wolf read the following proclamation into the record, which:

- Honors the millions of Americans who trace their ancestry to Asia and the Pacific Islands, representing more than 30 nations; and
- Encourages all residents to learn more about the history of Asian and Pacific Americans and to observe this month with appropriate programs and activities celebrating these diverse cultures.

Councilmember Wolf thanked the Mayor and Town Council for recognizing various heritage months throughout the year. She stated it is reflective of the town's population and inclusiveness.

Mayor Merkel stated that the representatives from Express Care, Inc.; the Asian American Chamber of Commerce; and Council of Korean Americans were unable to attend and Councilmember Wolf would accept the proclamation on their behalf.

Note: Later in the meeting, following the presentation for 'Click it or Ticket Weeks,' Naila Alam and Yasmeen Durrani arrived on behalf of Express Care, Inc. Mayor Merkel and Councilmember Wolf presented them with a proclamation for Asian Pacific Heritage Month.

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Following the presentation, Ms. Alam thanked the Mayor and Town Council for this recognition. She stated there are many Asian American groups who live and work in the town. She stated that she would share this proclamation with them.

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**TOWN OF HERNDON, VIRGINIA  
PROCLAMATION  
ASIAN PACIFIC AMERICAN  
HERITAGE MONTH  
MAY 2014**

The Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim the month of May 2014 as 'Asian Pacific American Heritage Month'; honor the millions of Americans who trace their ancestry to Asia and the Pacific Islands, representing more than 30 nations; emphasize that Asian and Pacific Americans have strengthened our nation and community through their achievements across all aspects of society, including business, politics, education, community service, military, the arts and sciences; recognize that Asian and Pacific Americans, who through their hard work, dedication to family and strong sense of community, have helped to unite and sustain our strong nation and have continued to break down barriers of discrimination, indifference and intolerance toward people of all backgrounds; and welcome the opportunity to celebrate Asian Pacific American citizens for their commitment to leadership, dedication to knowledge and determination to succeed.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby encourage all residents to learn more about the history of Asian and Pacific Americans and to observe this month with appropriate programs and activities celebrating these diverse cultures.

/s/  
Lisa C. Merkel, Mayor  
May 13, 2014

For more information regarding the Asian American Chamber of Commerce, please visit [www.asian-americanchamber.org](http://www.asian-americanchamber.org) and for more information about the Council of Korean Americans, please visit [www.councilka.org](http://www.councilka.org)

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**Proclamation, "Memorial Day," May 26, 2014.**

Councilmember Kirby read the following proclamation into the record, which:

- Recognizes Monday, May 26, 2014 as 'Memorial Day' in the Town of Herndon; and
- Encourages all individuals to attend the Memorial Day Observance, held on Monday, May 26, 10:00 a.m., at Chestnut Grove Cemetery in Herndon.

Councilmember Kirby stated that the American Legion Post 184 hosts the

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Memorial Day Observance each year at Chestnut Grove Cemetery in Herndon. He stated that the guest speaker this year would be Milfred H. Beagle, Jr., who is an active duty Colonel in the United States Army. There would be 60 casket flags in the Avenue of Flags, honoring deceased veterans from the area. Councilmember Kirby thanked the Herndon High School NJROTC Cadets, who help the American Legion immensely on both Veterans and Memorial Day. He stated that if anyone wants to learn how to fold an American Flag, the American Legion would be folding the casket flags at 5:30 p.m. on Memorial Day at Chestnut Grove Cemetery.

Councilmember Waddell stated that it was fitting to recognize Memorial Day and to pay honor and respect to those that have given their lives in service to our country and that there is a lot of service and symbolism surrounding the flag. On Memorial Day, the flag is raised to full staff and is lowered to half-staff, where it remains until noon, when it is restored to full staff. The flag is lowered to half-staff to honor those who died in service to our country, while raising the flag full staff honors our commitment to remember their sacrifice. He recalled several moving ceremonies for veterans he has attended.

Mayor Merkel called on members of the American Legion Wayne M. Kidwell Post 184; Harlon Reece, former Councilmember and Veteran; and any current members of the armed services or veterans in audience to join her and Councilmember Kirby, Commander, American Legion Wayne M. Kidwell Post 184 for the formal presentation.

Harlon Reece, member of the American Legion Post 184, thanked the Mayor and Town Council for this proclamation. He stated it is fitting to pause as a community to remember those that sacrificed their lives and to dedicate ourselves to uphold the ideals of the United States constitution.

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**TOWN OF HERNDON, VIRGINIA**  
**PROCLAMATION**  
**MEMORIAL DAY**  
**MAY 26, 2014**

The Mayor and Town Council of the Town of Herndon, Virginia, hereby recognize Monday, May 26, 2014 as 'Memorial Day' in the Town of Herndon; emphasize that the invaluable freedoms and securities that citizens of the United States enjoy are direct results of the bloodshed and continual vigilance of the United States Armed Forces over the course of our Nation's history; express our deepest appreciation to the men and women in uniform who have paid the ultimate price to defend the United States and the principles on which it was founded; admire their unwavering devotion to our Great Nation; and honor and preserve the legacy of these great Americans.

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Further, the Mayor and Town Council of the Town of Herndon Virginia, hereby implore all Americans to pay tribute and show gratitude toward the men and women in the Armed Forces and their families, through the display of flags and red, white and blue ribbons throughout the month of May and on **Memorial Day ~ Monday, May 26, 2014.**

Further, the Mayor and the Town Council of the Town of Herndon, Virginia, hereby encourage all individuals to attend the **Memorial Day Observance**, held on Monday, May 26, 10:00 a.m., at Chestnut Grove Cemetery in Herndon.

/s/  
Lisa C. Merkel, Mayor  
May 13, 2014

Please visit the town's website at [www.herndon-va.gov](http://www.herndon-va.gov) for more information about the Memorial Day Observance and for the town's Memorial Day schedule.

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**Proclamation, "Public Works Week," May 18 – May 24, 2014.**

Mayor Merkel read the following proclamation into the record, which:

- Proclaims the week of May 18 through May 24, 2014 as 'Public Works Week' in the Town of Herndon; and
- Acknowledges the hard work that the Department of Public Works does each day to benefit our community.

Mayor Merkel stated that she does not usually read proclamations, but she wanted to take the time to thank the town's Department of Public Works staff personally. She stated that they are heroes in the town and residents often compliment them and tell her that they do not know what they would do without the public works staff. She stated that the public works staff constantly goes above and beyond every day and she really appreciates all that they do to keep the town ticking.

Councilmember Kirby stated that the public works department is one of the reasons that paying taxes to the town is worth every penny. He stated that they collect trash, plow the streets and many other things that you would not find elsewhere. He thanked them all for a great job.

Councilmember Waddell echoed the comments of his colleagues and thanked the Department of Public Works for all that they do for the town. He commended staff for always performing their duties willingly and with a smile.

Vice Mayor Hutchinson stated that it was appropriate the Department of Public Works was receiving this honor right before the Herndon Festival. She stated that they always do a great job with the festival and thanked them for their service to the town.

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Mayor Merkel called on Robert B. Boxer, Director of Public Works, to provide a brief PowerPoint on Big Truck Days, which is on file in the Town Clerk's office.

Following the PowerPoint, Mayor Merkel called on Mr. Boxer and other members of the Department of Public Works staff in attendance to join her for the formal presentation.

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**TOWN OF HERNDON, VIRGINIA  
PROCLAMATION  
PUBLIC WORKS WEEK  
MAY 18 - MAY 24, 2014**

The Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim the week of May 18 through May 24, 2014 as 'Public Works Week' in the Town of Herndon; recognize this year's theme *'Building for Today, Planning for Tomorrow,'* which represents the idea of stewardship embodied by the profession of public works and the dedicated efforts of public works departments; acknowledge that because of building and planning, we are able to have clean water, clean communities, safe streets and neighborhoods and efficient traffic operations; and support the town's Department of Public Works and other organizations that seek to raise awareness about the importance of maintaining the infrastructure and services, collectively known as "Public Works."

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby recognize the dedicated and efficient operations of the town's Department of Public Works staff, who perform daily tasks involving water, sewer, street maintenance and snow removal; solid waste and recycling management, stormwater, right-of-way inspections, traffic engineering; building, grounds, vehicle and equipment maintenance; engineering and site plan review; project management and building inspections; express our appreciation to the public works staff, who together with the community, host 'Big Truck Days,' Community Clean-Up Weeks, holiday decorations, leaf collection and recycling events; thank staff for its support during special events, including the Herndon Festival, the 4<sup>th</sup> of July, Friday Night Live! and the Herndon Labor Day Festival; and acknowledge the hard work that the Department of Public Works does each day to benefit our community.

/s/  
Lisa C. Merkel, Mayor  
May 13, 2014

For more information about Public Works Week, please visit the Town of Herndon's website at [www.herndon-va.gov](http://www.herndon-va.gov) or contact the Department of Public Works at 703-435-6853 or [publicworks@herndon-va.gov](mailto:publicworks@herndon-va.gov).

**Proclamation, "Building Safety Month," May 2014.**

Councilmember Jonas read the following proclamation into the record, which:

- Proclaims the month of May 2014 as 'Building Safety Month,' in the Town of Herndon; and



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- Expresses appreciation to our Building Official's Office and local fire prevention officials, architects, engineers, builders and others in the construction industry who develop and enforce codes, to guarantee the safe construction of buildings that protect lives and property, ensuring that the places where we learn, live, play, work and recreate are safe.

Councilmember Jonas thanked staff for all their hard work. She stated that she has worked in the residential building industry for a long time and it is very important that these codes are put in place. It is especially fitting to read this before the Council discusses the downtown, stormwater management and other items relating to building this evening.

Councilmember Kirby reminded everyone who wants to make improvements to their home that they should check with the town to obtain the appropriate permits. He stated that the town inspection staff is very helpful and willing to assist homeowners.

Mayor Merkel called on John Orrison, Building Official; Robert B. Boxer, Director of Public Works; and other members of the Department of Public Works staff; to join her and Councilmember Jonas for the formal presentation.

Following the presentation, Mr. Orrison thanked the Mayor and Town Council for the proclamation. He stated that he was here to recognize the importance that building codes play in everyday life. He stated that with the town's support, staff has been able work with citizens, designers and builders to enforce the building codes. He reviewed the focus and themes for each week of Building Safety Month and stated that staff is committed to public safety and to customer service. He read from a letter sent to his staff from a general contractor, expressing appreciation for their hard work.

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**TOWN OF HERNDON, VIRGINIA  
PROCLAMATION  
BUILDING SAFETY MONTH  
MAY 2014**

The Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim the month of May 2014 as 'Building Safety Month,' in the Town of Herndon; recognize this year's theme, "*Building Safety: Maximizing Resilience, Minimizing Risks*"; highlight the importance of building safe, efficient and resilient construction; recognize the significance of new construction technologies; identify that countless lives have been saved by the implementation of safety codes, together with the critical role of our local code officials; and actively support the efforts of the Herndon Building Official's office and other organizations that advocate building safety programs ~ addressing critical issues in building safety for everyday life and in times of disaster, so that everyone benefits from the comfort and confidence that our structures are safe and sound.

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Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby express appreciation to our Building Official's Office and local fire prevention officials, architects, engineers, builders and others in the construction industry who develop and enforce codes, to guarantee the safe construction of buildings that protect lives and property, ensuring that the places where we learn, live, play, work and recreate are safe.

/s/  
Lisa C. Merkel, Mayor  
May 13, 2014

For more information about Building Safety, contact John Orrison at the Department of Public Works at 703-435-6853 or [John.Orrison@herndon-va.gov](mailto:John.Orrison@herndon-va.gov) or visit the International Code Council Foundation at [www.buildingsafetymonth.org](http://www.buildingsafetymonth.org).

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**Proclamation, "National Police Week," May 11 – May 18, 2014 and**  
**Peace Officers' Memorial Day," May 15, 2014.**

Vice Mayor Hutchinson read the following proclamation into the record, which:

- Proclaims the week of May 11 through May 17, 2014 as 'National Police Week' and Thursday, May 15, 2014 as 'Peace Officers' Memorial Day' in the Town of Herndon; and
- Encourages all individuals to place their flags at half-mast at their homes and work places on May 15, in recognition of the service and sacrifice of law enforcement officers in observance of 'Peace Officers' Memorial Day;' and to recognize 'National Police Week'.

Councilmember Waddell stated that being a police officer is a challenging profession and a full-time job, even when officers are not on duty. He honored those that gave their lives to the community and thanked all officers for their service.

Mayor Merkel echoed Councilmember Waddell's comments and stated that the Herndon Police Department does a lot for the community, even outside of the scope of police duties. She stated that Police Chief, Colonel Maggie A. DeBoard, was not in attendance tonight because she was attending a ceremony in downtown Washington, DC and that she would be busy all weekend with the Police Unity Tour.

Mayor Merkel stated that several officers were recently promoted and congratulated Captain Ron Thunman and Lieutenant Si Ahmad on their new titles.

Mayor Merkel called on Captain Ron Thunman, who was attending on behalf of Chief DeBoard; and all Herndon Police Officers or members of the Herndon Police Citizens' Support Team present; to join her and Vice Mayor Hutchinson for the formal presentation.

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Following the presentation, Captain Thunman thanked the Mayor and Town Council for recognizing National Police Week. He stated that in 1962, President John Kennedy first proclaimed May 15 as 'Peace Officers' Memorial Day' and the week in which that falls as 'Police Week.' He outlined several events occurring during Police Week, which would pay special recognition to those officers who have lost their lives in the line of duty. One of these events was the Police Unity Tour, which Chief DeBoard helped to organize. Chief DeBoard also participated in the bike convey with Herndon Officers Corporal Chris Farby and Officer Steve Monahan. Tonight, these officers, along with many others, were attending a candlelight vigil in Washington, DC.

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**TOWN OF HERNDON, VIRGINIA  
PROCLAMATION  
NATIONAL POLICE WEEK, MAY 11 – MAY 18, 2014  
PEACE OFFICERS' MEMORIAL DAY, MAY 15, 2014**

The Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim the week of May 11 through May 17, 2014 as 'National Police Week' and Thursday, May 15, 2014 as 'Peace Officers' Memorial Day' in the Town of Herndon; recognize 'National Police Week,' which pays special recognition to those law enforcement officers who have lost their lives in the line of duty for the safety and protection of others; formally acknowledge the brave police officers who protect life, freedom, and property; who selflessly enforce laws, bring criminals to justice; and who work to make our community safe.

Further, the Mayor and Town Council of the Town of Herndon Virginia hereby recognize and pay tribute to those law enforcement officers who, through their courageous actions, have made the ultimate sacrifice in service to the community, or have become disabled in the performance of duty; provide sincere support for those officers participating in the Police Unity Tour ~ especially our Herndon Police Department officers ~ who are raising awareness of police officers who have died in the line of duty; and express our appreciation to the Herndon Police Department, Herndon Police Citizens' Support Team, and other organizations that actively promote community partnerships, such as Neighborhood or Business Watch, as a means to keep our community safe.

Further, the Mayor and Town Council of the Town of Herndon Virginia, hereby encourage all individuals to place their flags at half-mast at their homes and work places on May 15, in recognition of the service and sacrifice of law enforcement officers in observance of 'Peace Officers' Memorial Day;' and to recognize 'National Police Week'.

/s/  
Lisa C. Merkel, Mayor  
May 13, 2014

For more information about *National Police Week*, please visit [www.policeweek.org](http://www.policeweek.org) and for information about the *Police Unity Tour*, please visit [www.policeunitytourchapteriv.com](http://www.policeunitytourchapteriv.com).

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**Proclamation, "Click It Or Ticket Weeks," May 19 – June 1, 2014.**

Councilmember Olem read the following proclamation into the record, which:

- Proclaims the weeks of May 19 through June 1, 2014 as 'Click It or Ticket Weeks' in the Town of Herndon; and
- Supports the Herndon Police Department in their efforts to promote and visibly enforce compliance of seat belt and child safety seat laws to save lives, reduce injury and save taxpayer money.

Councilmember Olem encouraged all residents to buckle up.

Councilmember Waddell stated that seatbelts save lives and encouraged everyone to wear seatbelts.

Mayor Merkel called on Captain Ron Thunman to join her and Councilmember Olem for the formal presentation.

Following the presentation, Captain Thunman stated that statistics continue to show that regular seatbelt use is the most effective way to protect yourself and your family in a motor vehicle crash. He reviewed several statistics that support the use of seatbelts and stated that Virginia law requires drivers and front seat passengers over 18 to wear a seatbelt and everyone under 18 in the vehicle to wear one. However, he stated that everyone should be buckled up. The Herndon Police Department would join with other state and local agencies to enforce all traffic safety laws, with an emphasis on seatbelt violations, during 'Click It or Ticket Weeks.'

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**TOWN OF HERNDON, VIRGINIA  
PROCLAMATION  
CLICK IT OR TICKET WEEKS  
MAY 19 – JUNE 1, 2014**

The Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim the weeks of May 19 through June 1, 2014 as 'Click It or Ticket Weeks' in the Town of Herndon; recognize the efforts of this successful national mobilization campaign; support this high-visibility enforcement effort, which is credited with increasing the national seat belt usage rate from 58 percent in 1994 to an all-time high of 87 percent in 2013; highlight the efforts of the Herndon Police Department and police departments across the nation to adopt a zero tolerance of persons not wearing a seat belt; encourage strong enforcement of seat belt laws and promote the increased use of seat belts, which are the most effective way to save lives, reduce the number of injuries on America's roadways and to lessen the strain on our nation's health care and emergency response systems; and support day and night enforcement activities, to ensure that everyone buckles up each time they are in a vehicle.

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Further, the Mayor and Town Council of the Town of Herndon Virginia, hereby support the Herndon Police Department in their efforts to promote and visibly enforce compliance of seat belt and child safety seat laws to save lives, reduce injury and save taxpayer money.

/s/  
Lisa C. Merkel, Mayor  
May 13, 2014

For more information about *Click It or Ticket Weeks*, please visit National Highway Traffic Safety Administration at [www.nhtsa.gov](http://www.nhtsa.gov); or visit the town's website [www.herndon-va.gov](http://www.herndon-va.gov) and follow the links to 'Public Safety.'

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**3. COMMENTS FROM THE TOWN MANAGER**

There were no comments from the Town Manager.

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**4. COMMENTS FROM THE TOWN COUNCIL**

**Councilmember Olem:** Stated that Friday, May 16 would be Bike to Work Day. She encouraged everyone to sign up and to stop by the pit stop in the Town of Herndon, located near the Depot.

**Mayor Merkel:** Stated that 'Yard of the Month' has started this year. She encouraged everyone to nominate themselves or a neighbor for an award. Nominations for the June Yard of the Month were due to the Cultivating Community Initiative by this Thursday, May 15. She encouraged everyone to visit the town's website for more information.

Mayor Merkel congratulated two of the Councilmembers-Elect who were in the audience this evening ~ Steven Lee Mitchell and Jennifer Baker.

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**5. ORDER OF AGENDA**

With the concurrence of Council, Vice Mayor Hutchinson asked that Resolution 14-G-40 (Memorandum of Understanding re. Rotary Club's "Little Free Library") be removed from the consent agenda for separate consideration.

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**6. COMMENTS FROM THE AUDIENCE**

**Town Elections:** Arthur Nachman, 866 Vine Street, Herndon, thanked everyone who ran for the recent town elections, congratulated the winners and expressed condolences for those who were not successful. He requested that the Council consider moving the town elections to November to increase voter turnout, reduce confusion and to save money.

**No Parking Signs:** Ann V. Null, 631 Oak Street, Herndon, thanked public works for putting up the no parking signs in her neighborhood and asked if the town could leave them up after the Herndon Festival.

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**7. PUBLIC HEARINGS**

**Ordinance 14-O-15, to amend Chapter 78 (Zoning), Sections 78-500.1 (Applicability) & 78-500.3 (Minimum Off-Street Parking Standards), ZOTA #13-04.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the Friday, April 25 and Friday, May 2, 2014 issues.

Mayor Merkel stated that prior to tonight's meeting, the Council received comments from the public on this item, which have been entered into the record.

Dana Heiberg, Senior Planner, presented the staff report and PowerPoint, which are on file in the Town Clerk's office. He stated that the proposed ordinance would include changes to parking standards town-wide, along with several adjustments to table 78-500.3 (a) in the zoning ordinance, which addresses parking standards outside of the downtown. At this time, the Planning Commission would not recommend changes to parking standards in the downtown or to multi-family requirements, which was different from the initiating resolution provided to the Council this past October. He stated that the Planning Commission recommendation would include certain language that clarifies the ability of the town to provide downtown public shared parking facilities by lease or license of land. The ordinance language as existing appears to require fee simple ownership of any land used for public shared parking. The proposed ordinance would clarify that public shared parking shall be provided upon physical occupancy of the building or structure to which the parking pertains.

Mr. Heiberg stated that the draft ordinance discussed by Town Council as part of the initiating resolution included a feature to reduce multi-family parking requirements, by allowing for the category of efficiency units, which were not included in the current ordinance. He stated that the draft provided that one

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parking space would have been required for each efficiency unit, but that the smallest category in the proposed ordinance is the one bedroom unit, which requires 1.5 spaces. He stated that the proposed ordinance also does not include table 78-500.3 (a)(1) and does not have an exemption to the requirements for small businesses, which was included in the original draft ordinance. Mr. Heiberg stated that Mr. Steve Mitchell (town resident and business owner) testified at the Planning Commission public hearing opposing this feature, due to a possible cumulative impact over time on the downtown parking environment and other concerns. Mr. Heiberg stated that several jurisdictions in Virginia allow parking exemptions for small businesses. He stated that additional changes to parking requirements in the downtown could be considered in the future and in light of the complex mix of factors, including the quantity of public shared parking that a developer may provide in Blocks D and E. Staff concurs with the Planning Commission and recommends approval of the proposed ordinance.

Vice Mayor Hutchinson stated that she believes that the Council should defer this item to review it further. She asked staff to clarify that the standards would not include bicycle parking.

Responding to Vice Mayor Hutchinson, Elizabeth M. Gilleran, Director of Community Development, stated that it was her recollection that there were bicycle parking recommendations in the downtown, but not in the chart that would apply elsewhere.

Vice Mayor Hutchinson stated that bicycle parking should be discussed further. She stated that only two spaces are permitted in residential areas on a public street, but that there is no designation for residential parking on a private street.

Responding to Vice Mayor Hutchinson, Ms. Gilleran stated that the town reviewed neighboring jurisdictions, most of which require two spaces for single-family homes. She stated that one locality had language differentiating a public or private street. The Council could revise this language as it saw fit.

In response to a query from Councilmember Waddell, Ms. Gilleran stated that the Planning Commission believed that it needed more time to review downtown parking, but recommended that the Council move forward with parking standards elsewhere in the town.

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

- Arthur Nachman, 866 Vine Street, Herndon, stated that the town was the owner in the downtown parcel that would be rezoned. He asked the town to enact legislation that would reduce the level of parking for what the town would sell and stated that the overflow parking would impact those using Public Shared Parking or commercial users. He stated that the level of

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parking for multi-family at Station Street should be the same as Fairfax County and that the town should pay the same as a private citizen or property owner.

- Ann V. Null, 631 Oak Street, Herndon, urged deferral of the proposed ordinance.

Following the public hearing, Councilmember Wolf move to continue ordinance 14-O-15, to amend Chapter 78 (Zoning), Sections 78-500.1 (Applicability) & 78-500.3 (Minimum Off-Street Parking Standards), ZOTA #13-04, to June 10, 2014. This motion was jointly seconded by Councilmembers Kirby and Olem.

Councilmember Kirby stated that on Ferndale Avenue, there was overflow parking from the nearby development. He stated that reducing the number of parking spaces in any development could produce more unwanted off-street parking. He encouraged continuing this item.

Mayor Merkel echoed the comments of her colleagues and supported continuing this item for further consideration.

The question was called on the motion, which was carried by a unanimous vote. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell, Wolf, Vice Mayor Hutchinson and Mayor Merkel voting "Aye."

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**Ordinance 14-O-16, Zoning Map Amendment ZMA #14-101, Downtown Master Plan, Blocks D and E Rezoning.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the Friday, April 25 and Friday, May 2, 2014 issues.

Mayor Merkel stated that prior to tonight's meeting, the Council received comments from the public on this item, which have been entered into the record.

Elizabeth M. Gilleran, Director of Community Development, provided the staff report and PowerPoint, which are on file in the Town Clerk's office. She stated that the proposed ordinance is a zoning map amendment (ZMA) to rezone approximately 2.9 acres located within downtown Herndon. The land is located between Center Street and Station Street, with the W&OD Railroad Regional Park property to the north. The property is also identified as a portion of Block D and Block E in the Downtown Master Plan (DTMP) and the 2030 Comprehensive Plan. She stated that the DTMP is illustrative and that in this area, buildings that incorporate residential use could be up to four stories, while office or commercial



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buildings are three stories. The property is currently zoned Central Commercial (CC) and the request is to change the zoning to Planned Development Traditional Downtown (PD-TD). She reviewed the different uses that were permitted per the downtown pattern book in Blocks D and E and emphasized that PD-TD would allow for flexibility and modifications concerning submittal requirements, height, downtown streetscape, loading space standards and garage screening standards. Ms. Gilleran stated that proffers are proposed with this rezoning, to include general proffers and proposed development proffers. The intent of the proffers was to ensure the necessary public improvements and to communicate anticipated public improvements. She stated that the proposed proffers would not affect the ability of the town to negotiate future contracts on this land, which would be a separate action. If there was a proffer or modification that a future developer would like to change, they would have file a proffer condition amendment, which was similar to a ZMA process and would require a public hearing. Ms. Gilleran stated that the Planning Commission took several meetings to review this ordinance and staff recommends continuing this item.

In response to queries from Councilmember Kirby, Ms. Gilleran stated that in the PD-TD district, there is no Floor Area Ratio (FAR). She stated that in form-based zoning code, the form is emphasized over the square footage. She stated that the shifting of multiple parcel density is not easy, but the DTMP does speak to modification of height, along Center Street.

Councilmember Kirby requested an incorporation of both FAR and form based zoning in the proposed ordinance. He would like a developer to have the option to move density from one portion of land to another.

Responding to Councilmember Kirby, Ms. Gilleran stated if a developer wanted to add a story somewhere else, the developer would have to come back before the council for an amendment.

Mayor Merkel stated that the reason the town went through this process was to create predictability and to demonstrate what the town wanted.

Councilmember Kirby stated that residents might change their minds over time.

Ms. Gilleran stated that staff understands that a developer could have a different idea than what was included in the rezoning. The developer would have the public hearing process option in that case.

In response to queries from Councilmember Waddell, Ms. Gilleran stated that a proffer could not be changed easily by a future Council and could only be changed through an amendment process.

Responding to Council's discussion, Richard B. Kaufman, Town Attorney, stated that if the town were not the owner, the property could not be legally 'down-zoned.'

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**Main Motion**      **(SUBSEQUENTLY SUBSTITUTED)**

Following the public hearing, (there were no comments from the audience), Councilmember Wolf moved to continue ordinance 14-O-16 Downtown Master Plan Blocks D & E Rezoning, to June 10, 2014. This motion was seconded by Councilmember Jonas.

Councilmember Wolf stated that this is an important piece of legislation and needed appropriate time to study and ask for citizen comments.

**Substitute Motion**      **(APPROVED)**

Vice Mayor Hutchinson moved to continue the public hearing on ordinance 14-O-16 to May 27, 2014, to discuss this item at the next work session. This motion was seconded by Councilmember Waddell.

Vice Mayor Hutchinson stated that the sooner this was discussed the better.

Councilmember Waddell stated that if there was a lot of discussion, the public hearing could be then continued until June.

The question was called on the motion, which was carried by a 5-2 vote. The vote was:

Vote: Councilmembers Kirby, Olem, Waddell, Wolf, Vice Mayor Hutchinson and voting "Aye." Mayor Merkel and Councilmember Jonas voting "Nay."

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**Ordinance 14-O-17, Zoning Ordinance Text Amendment ZOTA #13-07, to amend Chapter 78 (Zoning), Section 78-203.6(b), to allow civil violations to be prosecuted as criminal violations.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the Friday, April 25 and Friday, May 2, 2014 issues.

Mark Holland, Zoning Administrator, presented the staff report, which is on file in the Town Clerk's office. Mr. Holland stated that the proposed text amendment would allow civil violations of the zoning ordinance to be prosecuted as criminal violations when \$5,000 in cumulative fines have been issued for the same operative set of facts, instead of the current standard of issuance of three civil penalties. He stated that per the Town Attorney, it is doubtful that the town would ever issue civil fines in this amount or more. Before this dollar amount is reached, it is likely that a civil action for injunction would be recommended as a remedy to any such violation. Mr. Holland stated that the town's zoning ordinance currently states that each day during which a violation is found to exist

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shall constitute a separate offense. However, specific violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period and shall not be charged more than three times. The current language further states that a series of specific violations arising more than three times from the same operative set of facts would not result in civil penalties under this section. The Planning Commission expressed no issues or concerns with the subject zoning ordinance text amendment. It was their understanding that the purpose of the proposed text amendment was to remain consistent with the Commonwealth of Virginia's enabling legislation. Staff and the Planning Commission recommend approval of the proposed ordinance, as presented.

The public hearing was held and the following individuals presented testimony:

- Ann V. Null, 631 Oak Street, Herndon, stated that it is frightening that a person who owes the town money would be treated like a criminal. She urged the Council to oppose this amendment.

Following the public hearing, Councilmember Wolf moved approval of ordinance 14-0-17, to amend Chapter 78 (Zoning), Section 78-203.6(b), to allow civil violations, Section 78-203.6(b), to allow civil violations. This motion was seconded by Councilmember Olem.

Councilmember Wolf stated that the staff and Planning Commission did a great job in looking at this instance and the town would use this reluctantly. She stated that some of these fine cases take a lot of staff time and resources and the proposed ordinance could encourage a quicker resolution for large penalty cases.

Councilmember Olem stated that she has seen certain individuals repeatedly violate zoning regulations and that they would not be fined \$5,000 for one violation. She stated that this would apply to the habitual, repeat offenders.

Vice Mayor Hutchinson stated that the town has the ability to prosecute a civil violation as criminal if there are three offenses for the same violation. She stated that she was hesitant to support this item, because fines that can add up quickly.

In response to queries from Councilmember Waddell, Mr. Kaufman stated that currently, if there are three civil violations, the fourth violation can be changed to a criminal violation. He stated that the General Assembly changed that law, which now applies only to a \$5,000 in civil fines. He stated that the town has to cite each fine separately and it would take a long time to get to \$5,000. He stated that this would actually discourage the use of criminal process, as it is a higher threshold. He stated that any zoning ordinance violation could be criminal, but the courts do not like that; therefore, most zoning violations are civil in nature. Since 2008, Mr. Kaufman recalled that there were only two violations changed from civil to criminal status. Additionally, he stated that this item was an attempt to conform to the existing law.

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The question was called on the motion, which was carried by a 5-2 vote. The vote was:

Vote: Mayor Merkel, Councilmembers Jonas, Kirby, Olem, Wolf, voting "Aye." Vice Mayor Hutchinson and Councilmember Waddell voting "Nay."

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**14-O-17     Ordinance, An ordinance amending the Zoning Ordinance (2007) to allow civil violations of the Zoning Ordinance to be prosecuted as criminal violations when \$5,000 in cumulative fines have been issued for the same operative set of facts; ZOTA #13-07.**

**RECITAL**

In adopting this zoning ordinance the Town Council has considered the factors set out in §15.2-2284, Code of Virginia (1950), as amended.

**BE IT ORDAINED** by the Council of the Town of Herndon that:

1. Subsection 78-203.6. Civil violations, Zoning Ordinance (2007), Herndon Town Code (2000), as amended, is amended and reordained as follows:

**Section. 78-203.6. Civil violations.**

\*\*\*

- (b) *Cumulative penalties; criminal action.* Each day during which the violation is found to have existed shall constitute a separate offense. However, specific violations arising from the same operative set of facts shall not be charged more frequently than once in any ten-day period and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$5,000.00. Designation of a particular violation of this chapter for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violations resulting in injury to persons such designation shall preclude the prosecution of violation as a criminal misdemeanor, provided however, that when such civil penalties total \$5,000.00 or more, the violation may be prosecuted as a criminal misdemeanor.

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

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**Ordinance 14-O-18, Zoning Ordinance Text Amendment ZOTA #13-13, to amend Article II (Administration), Article III (Zoning Districts) and Article VII (Definitions), for implementation of the Virginia Stormwater Management Act and Virginia Stormwater Management Program Permit Regulations; and**

**Ordinance 14-O-19, Subdivision Ordinance Text Amendment SOTA #14-01, to amend Chapter 70 for implementation of the Virginia Stormwater Management Act and Virginia Stormwater Management Program Permit Regulations.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearings had been duly advertised in the Friday, April 25 and Friday, May 2, 2014 issues.

Mayor Merkel stated that as requested by staff and with the concurrence of Council, the public hearings on ordinances 14-O-18 and 14-O-19 would be held concurrently, with separate action on each ordinance following the public hearing.

Mark Holland, Zoning Administrator, presented the concurrent staff reports, which are on file in the Town Clerk's office. Mr. Holland stated that the proposed ordinances would amend relevant sections of the zoning ordinance as appropriate to conform to the changes of Chapter 26, as required under the Virginia Stormwater Management Act and the Virginia Stormwater Management Program Permit Regulations. He stated that the proposed text amendment would be related to the recently approved amendment, making technical changes to Article III, Chapter 26 of the Herndon Town Code, as presented as the last public hearings by the Department of Public Works. The changes would also include the addition of Article VIII, Stormwater Management to Chapter 26, conforming to the current legal requirements.

Mr. Holland stated that the town's stormwater management program was the effort to control erosion and to prevent sediment from flowing into streams. The Chesapeake Bay Preservation Area Overlay Districts adds a measure of water quality control. In June 2000, the Town Council adopted a Comprehensive Stormwater Master Plan that suggested that the town do more by establishing a Stormwater Management Ordinance. He stated that the proposed subdivision ordinance text amendment is a step toward achieving the objective of creating a Stormwater Management Ordinance. The proposed amendment also responds to concurrent and mandatory changes to Chapter 26, Environment, resulting from the enactment by the Virginia General Assembly of amendments to the Virginia Stormwater Management Program. Those changes are intended to enhance the quality in the waters of the Commonwealth and to turn responsibility for enforcement of stormwater management over to the local jurisdictions. He emphasized that for the zoning ordinance, few of the proposed text amendments are substantive, other than the new regulations to be added as Chapter 26, Article

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VIII. Mr. Holland stated that as for the subdivision ordinance, the text amendments would maintain consistency with the language of ZOTA #13-13, for modifications relative to Chapter 78 of the zoning ordinance. He stated that the Planning Commission recommends approval of both proposed ordinances, with the conditions as provided in both staff reports. Staff also recommends approval of the proposed ordinances, as presented.

Councilmember Waddell referred to Mr. David Bulova's (the town's consultant) comments in the staff report, which opined that the town would not recoup the cost of the program in every case. He asked if the town could bill the difference in actual cost to the incurring party?

Mr. Holland stated that drawing from Mr. Bulova's comments, the town could seek an amendment to the fee schedule from the state if it was determined that the fees were not covering the costs of the program. It was his understanding that this would be a learning process.

Councilmember Waddell asked for scope and magnitude of the costs for the program?

Mr. Holland stated that he would be more comfortable having Mr. Bulova answer that question.

In response to a query from Councilmember Wolf, Mr. Holland stated that he was not aware of any term at which the formula would be reviewed.

Mayor Merkel called the concurrent public hearings on ordinances 14-O-18 and 14-O-19.

**Vote on** **(Approved)**  
**Ordinance 14-O-18**

Following the public hearing (there were no comments from the audience), Councilmember Jonas moved approval of ordinance 14-O-18, to amend Chapter 78 (Zoning), Articles II, III & VII to implement the Virginia Stormwater Management Act & Virginia Stormwater Management Program Permit Regulations, ZOTA #13-13. This motion was seconded by Councilmember Waddell.

Councilmember Jonas thanked the staff of their work on the complex issue.

Councilmember Waddell stated that he understood this was mandatory.

The question was called on the motion, which was carried by a unanimous vote. The vote was:

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Vote: Councilmembers Jonas, Kirby, Olem, Waddell and Wolf, Vice Mayor Hutchinson and Mayor Merkel voting "Aye."

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**14-O-18**     **Amending the Zoning Ordinance, Article II, Administration, Article III, Zoning Districts, and Article VII, Definitions, for Implementation of the Virginia Stormwater Management Act (VA. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.); ZOTA 13-13.**

In adopting this ordinance, the Town Council has considered the factors set out in §15.2-2284, Code of Virginia.

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

1. Chapter 78, Zoning, Zoning Ordinance (2007) Herndon Town Code (2000), as amended is amended by the revision of Article II, Administration, as follows:

**Chapter 78**

**Zoning**

**Article II. Administration.**

**Sec. 78-201.3. Submittal requirements.**

\*\*\*

- (9) *Stormwater management submittal requirements.* In addition to the requirements of Section 26-326, Stormwater management plan contents for land disturbance in excess of 2,500 square feet, the following items must also accompany an application involving a generalized development plan, site plan, preliminary subdivision plan, or subdivision site plan, as indicated in Table 78-201.3(9):

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**Table 78-201.3(9) STORMWATER MANAGEMENT SUBMITTAL  
REQUIREMENTS TO ACCOMPANY APPLICATIONS INVOLVING A  
GENERALIZED DEVELOPMENT PLAN, SITE PLAN, PRELIMINARY  
SUBDIVISION PLAN, AND SUBDIVISION SITE PLAN**

Key: • = Required information						
		GDP <sup>1</sup> (if submitted)	Single Lot Development Plan	Site Plan <sup>2</sup>	Preliminary Subdivision Plan	Subdivision Site Plan
1	Natural features, including drainage divides and 100-year flood plain	•	•	•	•	•
2	Provisions for the adequate disposition of natural water and stormwater in accordance with the duly adopted design criteria and standards of the town, indicating location, pipe sizes and slopes, types and grades of ditches, catch basins and pipes, inlets and connections to existing drainage system		•	•		•
3	Off-site drainage area and acreages annotated		•	•	•	•
4	Overlot grading and drainage shown on plan with stormwater narrative relating	•	•	•	•	•
4a	Existing site conditions	•	•	•	•	•
4b	Run-off conditions on adjacent properties	•	•	•	•	•
4c	Proposed detention methods	•	•	•	•	•



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4d	Proposed method for meeting stormwater management requirements	•	•	•	•	•
4e	The surface waters into which the facility will discharge		•	•		•
4f	How stormwater will outfall without adverse effect on other properties or to the public drainage system	•	•	•	•	•
4g	Review of outfall adequacy	•	•	•	•	•
4h	Inspection and maintenance responsibilities	•	•	•	•	•
5	Easements for concentrated surface water discharged offsite		•	•		•
6	Overland relief provided for sump conditions and to clear building		•	•		•
7	Cross-sections of channel showing channel type, depth, velocity, water surface elevation, computations for adequacy and erosion control		•	•		•
8	Flood plain easement provided referencing flood plain study		•	•	•	•

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9	Analysis of capacity and proposed flow if site runoff is proposed to outfall to existing system,		•	•		•
10	Design computations provided for closed and open systems (include hydraulic grade line (HGL) if needed)			•		•
11	On and off site drainage areas to each drainage structure with area and 'c' factor		•	•		•
12	Inlet structures designed with 7.27 inches/hour intensity			•		•
13	Storm water management (SWM) facility structure details showing access, hydraulic outlet geometric data and coefficients, stage/storage and stage/discharge tables and graphs, 2 and 10 year in/out hydrographs, Spillway Design Flood hydrograph, freeboard analysis			•		•
14	Documentation and calculations verifying compliance with the water quality and quantity requirements of section 26-329		•	•		•

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15	Allowable release calculation: $Q_{post} = Q_{pre}$ + offsite controlled - on site uncontrolled			•		•
16	Riser/Outlet structure flotation analysis with 1.3 factor of safety			•		•
17	Pond profiles and sections showing top and bottom elevations, BMP and 2, 10 and 100 year elevations, riser and outfall pipe, dam embankment, side slopes, etc.			•		•
18	Spillway outfall pipe reinforced concrete pipe (RCP) class III 18" minimum, ASTM <sup>3</sup> C361 watertight joints			•		•
19	Foundation cut off trench at centerline (4' minimum width x 4' deep, 1:1 side slopes)			•		•
20	Show anti-seep collar(s) (detail required) around outfall pipe through dam			•		•
21	Concrete cradle required on outfall pipe through dam			•		•
22	Orifices and riser tops to have state standard trash racks and anti-vortex devices			•		•

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23	Plan shall include note: A Stormwater Management/BMP Facility Maintenance Agreement will be completed and recorded in Fairfax County Land Records prior to plan approval			*		*
24	SWM/BMP facilities access with 12' wide all weather surface and access easement	*		*	*	*
25	Permanent security fences required for SWM/BMP ponds in residential areas			*		*
26	Infiltration facilities shall be designed in accordance with Fairfax County's TESTING GUIDELINES FOR INFILTRATION FACILITIES, dated March 2007			*		*

<sup>1</sup> "GDP" refers to a generalized development plan, submitted with applications for zoning map amendments and special exceptions.

<sup>2</sup> In this table, "site plan" refers to site plans that require a public hearing and site plans that may be approved administratively, as applicable,

<sup>3</sup> Refers to ASTM International, originally known as the American Society for Testing and Materials (ASTM).

- (10) *Other submittal requirements.* The following items must also accompany an application for a zoning map amendment, special exception, site plan that requires a public hearing, preliminary subdivision plan, or subdivision site plan, as indicated in Table 78-201.3(10):

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**Table 78-201.3(10): OTHER SUBMITTAL REQUIREMENTS, AS APPLICABLE, TO ACCOMPANY APPLICATIONS FOR A ZONING MAP AMENDMENT, A SPECIAL EXCEPTION, A SITE PLAN THAT REQUIRES A PUBLIC HEARING, A PRELIMINARY SUBDIVISION PLAN, AND A SUBDIVISION SITE PLAN**

Key: • = Required information

		GDP* (if submitted)	Site Plan That Requires a Public Hearing	Preliminary Subdivision Plan	Subdivision Site Plan
1	A traffic impact study for the proposed uses(s) prepared in accordance with section 78-501.2, traffic impact studies	•	•	•	•
2	A form that certifies whether or not VDOT review is required for the development proposal in accordance with Virginia Code § 15.2-2222.1 and 24 VAC 30-155-10 and following of the VDOT regulations	•	•	•	•
3	A legal description of the property, including metes and bounds with bearings and distances	•			
4	A description of special amenities proposed within the development	•		•	
5	A statement setting forth the proposed approximate development schedule	•		•	

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6	Certification, in a form prescribed by the zoning administrator, that all required public notification regarding a public hearing has been given in accordance with section 78-201.9; documentation of public notification shall be submitted upon completion of proper notification by the applicant	•	•	•	
7	Letter of certification from a licensed engineer as proof of compliance of any proposed exterior equipment (generators, compressors, and the like) with the standards of section 78-515.3, Noise and section 78-515.4, Earthborn vibration standards.		•	•	•
8	For review and presentation at the planning commission and the town council meetings: nine copies of the primary plan sheet and landscape plan sheet (as applicable) on 11" x 17" sheets for each meeting, in a form determined by the zoning administrator.	•	•	•	
10	Prior to submittal of the application materials, the applicant may request that the zoning administrator or subdivision administrator approve relief from any specific submittal requirements listed in section 78-201.3 or elsewhere, other than Chapter 26, Environment, if the zoning administrator or subdivision administrator deems such requirements unnecessary for the evaluation of the application.	•	•	•	•

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\* "GDP" refers to a generalized development plan, submitted with applications for zoning map amendments and special exceptions.

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**Sec. 78-202.6. Site plans, single lot development plan and building location surveys.**

\*\*\*

(g) *Required improvements.* All improvements shall be shown on the site plan (excluding a single lot development plan) and installed at the cost of the applicant in accordance with the Town of Herndon Public Facilities Manual (1997), as amended, as described in section 1-16 of the Herndon Town Code, and the following standards:

\*\*\*

- (3) Stormwater management provisions in accordance with Chapter 26, Environment, and Section plan shall meet the content requirements of 78-201.3(9), Stormwater management plan submittal requirements.

\*\*\*

2. Chapter 78, Zoning, Zoning Ordinance (2007) Herndon Town Code (2000), as amended is amended by the revision of Article III, Zoning Districts, as follows:

**Chapter 78**

**Zoning**

**Article III. Zoning Districts.**

**Sec. 78-304.4. - Chesapeake Bay Preservation Area overlay district (CBPAOD).**

(a) *Statement of intent.*

- (1) The Chesapeake Bay Preservation Area (CBPA) overlay district is established under the authority provided in Code of Virginia, § 15.2-2280, and following, and to implement the requirements of Code of Virginia, § 62.1-44.15:67 et seq., and to:

- a. Implement the objectives for the environment described in the comprehensive plan;

\*\*\*

(d) *Designation of Chesapeake Bay preservation areas.*

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\*\*\*

- (3) The intensely developed area (IDA) delineates development and infill sites as of October 23, 1990 (the date of original adoption of regulations for Chesapeake Bay Preservation Areas) where development was concentrated and little of the natural environment remains. The IDA shall comply with under section 78-304.4(i)(9).

\*\*\*

- (g) *Permitted Uses in Chesapeake Bay Preservation Areas.*

\*\*\*

- (3) Redevelopment outside the IDA shall be permitted in the RPA only if there is no increase in the amount of impervious surface and no further encroachment within the RPA. Additionally, this redevelopment shall conform to applicable erosion and sediment control and stormwater management criteria set forth in section 78-304.4(i)(6) as well as all applicable stormwater management requirements of other Virginia and federal agencies.

- (h) *Exempted uses in Chesapeake Bay preservation areas.*

- (1) Water wells, historic preservation activities, archaeological activities, and passive recreation facilities such as boardwalks, paved trails, unpaved trails and pathways are exempt from the CBPAOD regulations, including the need to conduct a water quality impact assessment under section 78-304.4(k) provided they meet the following criteria:

- a. All required local, state and federal permits have been issued;
- b. Sufficient and reasonable proof is submitted that the intended use does not deteriorate water quality;
- c. The intended use does not conflict with nearby planned or approved uses; and
- d. There is compliance with Article III, chapter 26 (Erosion and Sediment Control) and Article VIII, chapter 26 (Stormwater Management) of the Town of Herndon Code if the land disturbance exceeds an area of 2,500 square feet.

- (2) Construction, installation, operation and maintenance of electric, natural gas, fiber optic, water, sewer, underground telecommunications, cable television and telephone transmission lines, railroads and public roads and their appurtenant structures are exempt from the CBPAOD regulations, including the need to conduct a water quality impact



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assessment under section 78-304.4(k), provided they meet all of the following criteria:

\*\*\*

e. All such construction, installation and maintenance of such utilities and facilities comply with all applicable town, Virginia and federal permits and are designed and conducted in a manner that protects water quality through:

1. The Erosion and Sediment Control Law (Code of Virginia, § 62.1-44.15:51 et seq.), Article III, chapter 26 of this Code (Erosion and Sediment Control) and the Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.);

\*\*\*

(i) *General performance criteria for land disturbance in Chesapeake Bay protection areas.*

\*\*\*

(6) Land disturbance of 2,500 square feet or more (including construction of all single-family houses) shall comply with chapter 26, Article III (Erosion and Sediment Control) and chapter 26, Article VIII (Stormwater Management) of the Herndon Town Code.

(7) A water quality impact assessment, pursuant to section 78-304.4(k), shall be required for the following:

a. Any proposed land disturbance, development or redevelopment activity within a RPA, including the expansion of non-conforming structures and uses, as identified in section 78-304.4(l); or

b. Any development within the RMA, as deemed necessary by the zoning administrator, based upon the unique characteristics of the site or intensity of the proposed use(s) or development.

(8) The developer shall provide evidence to the town, prior to commencing grading or other on-site land disturbing activities, that any wetlands or similar permit required by federal, Virginia or local laws or regulations have been properly obtained.

(9) If the development is located within the IDA:

a. Vegetation shall be provided to the extent possible to assist in re-establishing vegetation within a 100-foot wide buffer area along any streams on the site or adjacent to the site in order to maximize water quality protection, pollutant removal and water resource conservation.

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b. The zoning administrator may waive the requirements for the re-establishment of vegetation within the RPA buffer within the IDA, in accordance with section 78-304.4(m), administrative waivers of requirements for CBPAs (RMAs and RPAs).

(j) *Additional development criteria for resource protection areas.*

\*\*\*

6) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in RPAs, provided that:

\*\*\*

c. The facility must be consistent with those permitted in chapter 26, Article VIII (Stormwater Management) of the Herndon Town Code;

\*\*\*

(k) *Water quality impact assessment.*

\*\*\*

(4) The submission and review requirements shall meet the following standards:

\*\*\*

c. As part of any major water quality impact assessment submittal, the zoning administrator may require the State Water Control Board (SWCB) to review the assessment and respond with written comments. Upon receipt of a major water quality impact assessment, the zoning administrator will determine if a SWCB review is warranted to assure compliance with this article. The zoning administrator may incorporate any comments from SWCB received within 90 days of the request into the final review.

\*\*\*

(m) *Administrative waivers of requirements for CBPAs (RMAs and RPAs).*

\*\*\*

(3) The zoning administrator may grant waiver requests for section 78-304.4(i), provided:

a. The request is the minimum necessary to afford relief;

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- b. Granting the request does not confer upon the applicant any special privileges denied by this article to other property owners in the Chesapeake Bay Preservation overlay district;
- c. The request is in harmony with the purpose and intent of this article and is not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality;
- d. The request is not based upon conditions or circumstances that are self-created or self-imposed;
- e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and,
- f. The request meets the requirements for granting an exception in section 26-329.

\*\*\*

- 3. Chapter 78, Zoning, Zoning Ordinance (2007) Herndon Town Code (2000), as amended is amended by the revision of Article III, Zoning Districts, as follows:

**Chapter 78**

**Zoning**

**Article VII. Definitions.**

**Sec. 78-701. Definitions.**

\*\*\*

*Best management practices or BMP* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

\*\*\*

*Land disturbing activity.* Any land change which may result in soil erosion from water or wind or the movement of sediments into state waters or onto lands in the town including, but not limited to, clearing, grading, excavating, transporting and filling of land. The term shall not include:

- (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work of less than 2,500 square feet;

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- (2) Individual service connections;
- (3) Installation, maintenance or repair of any underground public utility lines when such activity occurs in an existing hard-surfaced road, street or sidewalk, provided that such land disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas including the well site, roads, feederlines and off-site disposal areas;
- (7) Tilling, planting or harvesting of agricultural, horticultural or forest crops or livestock feed-lot operations; including agricultural engineering operations as follows: the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Code of Virginia, § 10.1-604, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
- (8) Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;
- (9) Emergency work to protect life, limb or property, and emergency repairs; provided, however, that if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the town; and
- (10) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.

\*\*\*

4. This ordinance shall be effective at 12:01 a.m. on July 1, 2014, or at such later time and date as may be determined by the Commonwealth of Virginia to implement compliance with the Stormwater Management Act and associated regulations.

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**Vote on (Approved)  
Ordinance 14-O-19**

Following the public hearing, (there were no comments from the audience), Councilmember Jonas moved approval of ordinance 14-O-19, to amend Chapter 70 (Subdivisions of Land), to implement the Virginia Stormwater Management Program Permit Regulations, SOTA #14-01. This motion was seconded by Councilmember Kirby.

Councilmember Kirby stated that the Environmental Protection Agency (EPA) and Commonwealth have required these ordinance changes, which would create cleaner water.

The question was called on the motion, which was carried by a unanimous vote. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell and Wolf, Vice Mayor Hutchinson and Mayor Merkel voting "Aye."

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**14-O-19 Ordinance, Amending the Subdivision Ordinance to make technical changes to Storm Water Management provisions; SOTA # 14-01.**

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

1. Subsection 70-202(c), Preliminary subdivision plan, Subdivision Ordinance (2007), Herndon Town Code (2000), as amended, is amended and re-ordained as follows:

**Section 70-202. Preliminary subdivision plan.**

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- (c) *Standards.* A preliminary subdivision plan shall be approved upon determination by the decision making authority that the development and uses proposed in the preliminary subdivision plan and its general layout and design comply with:

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- (4) Utility plan requirements of the Virginia Code, § 15.2-2269, as may be amended.
- (5) The Herndon Guidelines for the Planning and Design of Town Streetscape Projects (dated November 25, 2008, as may be

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amended, located in the Herndon Department of Community Development).

- (7) Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core, dated August 23, 2013, by Urban Design Associates including the "List of Proposed Amendments" dated November 5, 2013, revised November 26, 2013.

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2. Subsection 70-206(d), Lot line adjustment plat, Subdivision Ordinance (2007), Herndon Town Code (2000), as amended, is amended and re-ordained as follows:

**Section 70-206. Lot line adjustment plat.**

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- (d) No lot line adjustment shall be approved if it would involve or result in:

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- (5) Any violation of this chapter, the zoning ordinance, chapter 78 of the Herndon Town Code; or of Article III, Erosion and Sediment Control, or Article VIII, Stormwater Management, of Chapter 26 Environment, of the Herndon Town Code.

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3. This ordinance shall be effective at 12:01 a.m. on July 1, 2014, or at such later time and date as may be determined by the Commonwealth of Virginia to implement compliance with the Stormwater Management Act and associated regulations.

**Resolution 14-G-38, Application for Special Exception SE #14-02, 898 Crestview Drive to permit the addition of toddler and pre-primary programs to the curriculum of the Dulles Montessori School.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the Friday, April 25 and Friday, May 2, 2014 issues.

Mark Holland, Zoning Administrator, presented the staff report and PowerPoint, which are on file in the Town Clerk's office. He stated that the proposed resolution was for a special exception to permit the addition of toddler (16

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months to two years of age) and pre-primary (two years to four years of age) programs to the curriculum of the Dulles Montessori School. Mr. Holland stated that the toddler program would provide for students 16 months to two years in age and would occupy a single classroom. This program would have a ratio of one staff member for every five students. The pre-primary program would provide for students two years to four years in age and would occupy two adjoining classrooms. He stated that the subject use currently operates under special exception SE #05-08, as approved under former tenant SciTech Academy, with an age limitation of four to 12 years of age. In January 2007, the applicant, Dulles Montessori School, assumed the use with the conditions as approved in special exception, SE #05-08. He stated that the Dulles Montessori School currently operates with fewer students and staff and therefore does not exceed the maximum limitations stated for the previous tenant. Mr. Holland stated that the applicant was not requesting any modifications to the property to include the building. Several of the approved conditions would be modified to be consistent with the addition of student programs and other minor variations to the use. The use would continue to operate from September to July, Monday through Friday, from 7:30 a.m. to 6:00 p.m. The current student drop-off and pick-up process would also continue as it is operating now.

Mr. Holland stated that the staff supports the addition of toddler and pre-primary programs to the curriculum of the existing Dulles Montessori School, with conditions. The use would operate well within the parameters of the previously approved special exception, with some modifications. He stated that in the recommended conditions, staff is restating the conditions as approved with SE #05-08 with modification as necessary to accommodate the proposed use expansion. He stated that of specific note is that the landscaping as conditioned in the previously approved special exception does not appear to be installed on the site. This landscaping should be planted regardless of approval of the requested special exception. Additionally, there is an existing play area on the southeast corner of the property, adjacent to the Herndon Golf Course, which should be removed, as it was not approved with the current special exception. Staff does not recommend that this particular play area be approved with the proposed special exception, due to safety concerns because of its proximity to the golf course.

Councilmember Waddell asked if staff would recommend modifying the play area with a safety net or removing the area entirely? He asked where the landscaping that was part of the previous special exception would be located and if the approval of this special exception could be contingent on compliance with the existing plan?

Responding to queries Councilmember Waddell, Mr. Holland stated that there was netting installed by the golf course, which extends along part of the property. He stated that to bring the property into compliance with the existing special exception, that play area must be removed. Mr. Holland showed where the landscaping included with the special exception should be located on his PowerPoint. He stated that the proposed resolution would include the

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continuation of the previously approved special exception; therefore, additional language addressing that matter was not necessary.

Mayor Merkel asked if the inspections were conducted on the property in accordance with the previous special exception approved in 2005?

In response to Mayor Merkel, Mr. Holland stated that staff conducts inspections, but is sometimes not aware of modifications to properties until either another application is submitted or if a complaint is made on the property.

Mayor Merkel asked staff to check if special exceptions are meeting requirements more frequently throughout the town.

Vice Mayor Hutchinson asked staff to verify that the original special exception for this property did not have a play area.

Mr. Holland agreed with Vice Mayor Hutchinson and stated that the previously approved special exception did not include a play area on the property.

In response to a query from Councilmember Kirby, Mr. Holland pointed out the location of the netting and play area, relative to the golf course.

Mayor Merkel asked if the playground would be removed regardless, or if it was a separate violation?

In response to the query from Mayor Merkel, Mr. Holland stated that as written, the applicant would have to comply with the previous special exception, but Council has the ability to revise its conditions.

Laxmi S. Chauhan, 898 Crestview Drive, Herndon (the applicant), stated that her zoning permit included an active play area on the northside of the property and a quiet outdoor reading area on the southside. Ms. Chauhan stated that balls from the golf course are hitting both sides of the property and that the netting does not protect the entire property. She asked that the town look at extending the net to resolve this safety issue.

Mr. Chauhan (the property owner), stated that the northside area is more dangerous than the south and that more cars are hit with golf balls on that side.

Mayor Merkel questioned why the playground was included with the zoning permit and not on the special exception, as Ms. Chauhan stated?

Mr. Holland stated that this could have occurred when the property changed hands in 2007 as part of the zoning appropriateness permit.

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



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- Carmern Babonneau, 1201 Mosby Court, Herndon, stated that she has lived in Herndon for over 25 years. She stated that while she has no objections as a neighbor of the school, she asked the town to consider the traffic problem that occurs at the intersection of Crestview Drive and Sterling Road and how an increase in enrollment at the school would affect the traffic. She also asked the town to look at safety measures or speed signs for area by the school.

Following the public hearing, Councilmember Wolf moved approval of Resolution 14-G-38. This motion was seconded by Councilmember Olem.

Councilmember Wolf stated that with the special exception, the enrollment limit should not change and that the resolution was modifying the age limit. She welcomed another option for parents and was glad to hear that there was discussion about addressing the safety concerns.

Vice Mayor Hutchinson asked if speed warnings or signs could be added to Crestview Drive, as the last speaker suggested?

Mr. Holland stated that it was his understanding that only public schools receive those kinds of safety markings or signs.

Vice Mayor Hutchinson asked if the town could install some safety signs at this location?

The Town Manager stated staff that would research state code to see what the town was permitted to do regarding the installation of signs for the school.

Mayor Merkel echoed Vice Mayor Hutchinson's comments and asked if the TEIC committee could review adding safety signs or measures, such as rumble strips. She also asked residents to let her know what was going on at this location and to make staff aware of any problems.

Councilmember Kirby asked if the golf course could extend the netting along the property line to Crestview Drive?

The Town Manager stated that extending the fence would be making improvements on private property and staff would have to see how this could be done.

Councilmember Kirby asked that the golf course be in touch with the property owners to see if the netting could be extended.

The Town Manager stated that staff could contact the school to work on extending the netting.

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Ms. Chauhan (applicant) stated that she has discussed the netting with the golf course and would be willing to do whatever is needed to improve the children's safety.

Mayor Merkel encouraged staff to move forward with extending the netting. Following Council's discussion, and with the concurrence of Council, staff was requested to:

- Research the Code of Virginia to determine if the town is permitted to install "school zone" signs in the vicinity of private schools;
- Direct TEIC to determine if rumble strips would be an appropriate traffic calming measure near the school; and
- Consult with the school staff regarding safety measures around the vicinity of the school.

The question was called on the motion, which was carried by a unanimous vote. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell and Wolf, Vice Mayor Hutchinson and Mayor Merkel voting "Aye."

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**14-G-38      Application for a Special Exception, SE #14-02, Pre-School Child Care Program.**

**WHEREAS,** the applicant, Laxmi S. Chauhan, has submitted a request for a Special Exception to permit the addition of toddler (16 months to two years of age) and pre-primary (two years to four years of age) programs to the curriculum of the Dulles Montessori School located at 898 Crestview Drive, Herndon, Virginia and identified as Fairfax County Tax Map Reference 0103-02-00115A; and

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

**WHEREAS,** the Planning Commission has recommended that the application be approved with conditions based upon the finding that the proposed use with conditions is not adverse to the purpose and intent of the Zoning Ordinance, in particular §78-202.3(e); and

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**WHEREAS**, the Town Council has reviewed the application and the Planning Commission recommendations and has found that the proposed use, with conditions, is not adverse to the purpose and intent of the Zoning Ordinance, in particular §78-202.3(e).

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

1. Determines that this proposed use meets the following standards as found in §78-202.3(e):
  - a. Is consistent with the comprehensive plan.
  - b. Is free of conflict with any provision of this chapter and related town regulations or any other applicable local, state, or federal laws and regulations.
  - c. Does not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.
  - d. Consistent with the purpose and intent of the zoning district in which it is located, or will improve compatibility among uses and will ensure efficient development within the town.
  - e. Minimizes adverse visual impact of the proposed use on adjacent lands.
  - f. Contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices.
  - g. Minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.
  - h. Avoids significant adverse impacts on the property values of surrounding lands or substantially and permanently injures the use of neighboring property for those uses that are permitted in the zoning district.
  - i. Does not significantly and adversely impact the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
  - j. Results in development that is adequately served by transportation facilities, including whether or not a substantial deterioration of the level of service on the town's

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transportation network would occur and whether or not the proposed use is designed to ensure safe ingress and egress onto the site and safe road conditions on and around the site.

- k. Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).
  - l. If infill and redevelopment is consistent with the redevelopment criteria and other applicable guidelines as stated in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as amended.
  - m. If located in the floodplain overlay district, meets floodplain overlay standards.
2. The Town Council hereby grants to Laxmi S. Chauhan, the applicant,—Special Exception #14-02 with the following conditions:
- a. Substantial Conformity. The site shall be developed and maintained in substantial conformance with the special exception plan dated on March 26, 2005.
  - b. Permitted use. The use shall be limited to an elementary school to include toddler and pre-primary programs. The toddler program shall provide for students 16 months to two years in age and shall occupy a single classroom. The pre-primary program shall provide for students two years to four years in age and shall occupy two adjoining classrooms. The total number of students shall not exceed 99.
  - c. Student to Teacher Ratio. The toddler and pre-primary programs shall maintain a student to teacher ratio that is consistent with the state standard. All classrooms will be located of the first floor of the existing building.
  - d. Hours of Operation. The hours of operation are 7:00 a.m. until 6:30 p.m. Standard arrival time for the school shall be 8:15 until 8:30 for the upper grades and 8:45 until 9:00 for the lower grades. Standard departure time shall be 3:15 p.m. until 3:30 p.m. for the upper grades and 3:45 p.m. until 4:00 p.m. for the lower grades. Students enrolled in before or after school care shall arrive at or after 7:00 a.m. and shall depart at or after 4:00 p.m., but not later than 6:30 p.m. The school shall operate from September to July to include

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before and after school care, an elementary school consisting of grades K-6<sup>th</sup>, and a summer camp program.

- e. Student Drop-off and Pick-Up. Child drop-off and pick-up shall be limited to the designated area adjacent to the rear entrance of the use. Children arriving by private vehicle shall not be dropped off or picked up in the drive aisle. A member of the school staff shall be present to assist students in to and out of the vehicle and supervise the process.
- f. Commencement of Operation. Prior to commencement of operation, as permitted by the granting of this special exception, a new zoning inspection permit shall be applied for by the applicant and approved, if it is approved, by the town.
- g. Maintenance of Site Amenities. As approved in special exception SE #05-08:
  - 1. The active play area shall be located on the north side of the building and shall be surrounded by a 4 foot tall fence of a style and material approved by the Architectural Review Board. The number of children allowed outside to play in the play area shall be limited to no more than 25 at any one time, or to a number permitted in accordance with any State or other governing regulation based upon the size of the play area, whichever is less.
  - 2. The applicant may build a quiet play or reading garden for passive quiet recreation and outdoor supervised classes on the south side of the building. The area designated as the quiet play or reading garden shall be at least 15 feet from the southern property line.
  - 3. The shed shall be moved to an existing paved area, not within a parking space, or removed from the site.
  - 4. The dumpster shall be relocated to an existing paved area, not within a parking space, and a screen, as approved by the Architectural Review Board, shall be constructed.

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- h. Required Site Plan Revision. A site plan revision for the proposed modifications to the property shall be submitted for review and approval (if it is approved) prior to installation of the proposed structures. In addition to all other site plan requirements, the revision shall indicate proposed replacement landscaping.
- i. Landscaping. As approved in special exception SE #05-08:
  - 1. Fifteen 6 foot tall evergreen trees shall be planted along the southern and northern buffer areas where currently there is a lack of evergreen screening.
  - 2. If located on the property, the dead evergreen tree located approximately at the midpoint of the southern property line shall be removed and replaced with one of the 15 new trees.
- j. Staff Parking. The first eight parking spaces located along the northern edge of the drive aisle immediately adjacent to the Crestview Drive entrance/exit shall be restricted to staff parking.
- k. Compliance with Other Regulations. The proposed use shall meet all applicable Town, County, State and Federal regulations.
- l. Termination. This special exception may be terminated by the Town Council, following public hearing, based upon information provided by the Zoning Administrator, if the use is not operated in accordance with the zoning ordinance and the conditions set forth within this approval.
- m. Expiration. This special exception shall automatically expire, without notice, twelve months after the date of Town Council approval unless the proposed use has commenced operation. Additional time to commence the operation may be granted by the Town Council if a written request is submitted to the Zoning Administrator at least sixty days prior to the expiration date.
- n. Transferability. This special exception runs with the land identified as Fairfax County Tax Map Number 0103-02-0011A and is not transferable to other properties.

- o. Inspection. The property owner shall during reasonable hours upon prior notice make provisions to allow town officials to inspect the property.
3. This resolution by its terms shall be effective on and after the date of its adoption.

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**Resolution 14-G-39, Town of Herndon Town Manager's recommended FY 2015 - FY 2020 Capital Improvement Program (CIP).**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearings had been duly advertised in the Friday, April 25 and Friday, May 2, 2014 issues.

Dana Heiberg, Senior Planner, presented the staff report and PowerPoint, which are on file in the Town Clerk's office. Mr. Heiberg stated that the CIP is a six-year schedule for funding public facilities and improvements. He stated that the first year of the CIP was part of the FY 2015 budget and that the "out year" project amounts form a plan to fund the projects the town wants to advance. He stated that the proposed CIP contains 44 projects, which consist of 32 General Fund projects and 12 Enterprise Fund projects. Many of these projects are ongoing from the FY 2015-FY 2020 CIP; however, new projects would include Herndon Parkway intersection improvements (which became three projects instead of one) and improvements to the Chestnut Grove Cemetery. He provided an overview of several projects included in the areas of Parks and Recreation; Public Works; Community Development; the Golf Course; and the Water and Sewer fund, as provided in staff's PowerPoint.

Mr. Heiberg emphasized that many projects advancing to construction had funding allocated in designated reserves and stated that approximately \$32.4 million would be allocated from the General Fund for the six-year period. The funding for the FY 2015 would total approximately \$4.2 million and funding sources included the General Fund, Grants, Proffers, HB 2313 funding, General Obligation Bonds and Capital Leases. He presented a table that summarized the differences between what is needed to fund the total CIP and the town's resources. He stated that the CIP is balanced in FY 2015-2017, but as the town moves further into the future, there is a funding deficit. To account for this shortfall, the town could consider further grants and use of the unassigned fund balance. However, when the town reaches FY 2020, there is a projected surplus. Mr. Heiberg reviewed the upcoming CIP projects related to Metrorail, which are provided in staff's PowerPoint.

Mr. Heiberg stated that the proposed resolution would recognize action on the FY 2015 CIP and would approve the FY 2016-FY 2020 portion of the FY 2015-FY 2020 CIP. Staff recommends approval of the FY 2015-FY 2020 CIP, including

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the summary sheet labeled "Town Manager's Recommendation for Town Council May 13, 2014."

Vice Mayor Hutchinson stated that the town recently approved the purchase of additional water and sewer capacity. She asked if the proposed purchase would be in addition to what was already approved?

In response to Vice Mayor Hutchinson, Mr. Heiberg stated that he was not aware of a previous purchase, but the proposed CIP included what the town would need for the future.

Following Mr. Heiberg's comments, Mary Tuohy, Director of Finance, stated that she believed that the last purchase of additional water capacity was in 2005.

Mayor Merkel stated that she recalled an additional recent purchase as well.

Ms. Tuohy clarified that the proposed capacity purchase in the CIP was the same that was approved as part of a previous CIP, related to the Metrorail area. She stated that the town had not purchased the capacity yet, which would come before Council as separate water and sewer agreements. She stated that the town would have to work with Fairfax Water and Fairfax County, which staff had not started yet.

Vice Mayor Hutchinson stated that she would have liked to have seen that information when the capacity was first added to the CIP.

Vice Mayor Hutchinson asked why the Community Center Phase V was included in the CIP in only a few years?

Responding to Vice Mayor Hutchinson, Mr. Heiberg stated that there was a significant amount programmed for the Community Center project, \$2.9 million in FY 2017, which would mainly come from general obligation bonds. He stated that the project would be moving toward design, which staff viewed as a priority.

Following Mr. Heiberg's comments, Arthur A. Anselene, Town Manager, stated that the funding allocated for the Community Center Phase V would be programmed to conduct an analysis for the project. He stated that the FY 2017 funding was added to the CIP as a placeholder and that the Council could change when the project was funded. Once the analysis was completed, the Council would have a better idea of the timeframe and costs of this project.

Councilmember Wolf stated that she was surprised to see the downtown interactive feature had remained in the CIP, as she thought it was removed during the midyear budget review.

In response to Councilmember Wolf, Mr. Anselene stated that staff had moved the interactive fountain back a few years and that it would be tied into the downtown redevelopment.



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Councilmember Kirby requested for a clarification on the location of Old Spring Street?

Responding to Councilmember Kirby, Mr. Heiberg clarified that 'Old Spring Street' was located on Spring Street, near where it intersects with Van Buren Street. He stated there is a lot of interest in enhancing that portion of Van Buren and Spring Street, including pedestrian improvements related to the development of the Herndon Metrorail.

Following Mr. Heiberg's comments, Mr. Anselene stated that the project on Old Spring Street was part of overall enhancements to that roadway, which would include storm drain improvements and traffic calming measures.

Responding to Council's discussion, Councilmember Olem stated that the town had discussed changing the name on that portion of Spring Street to 'Old Spring Street,' but the residents did not agree.

Following Council's discussion regarding projects on Old Spring Street, Ms. Gilleran stated that the project would actually be located on Van Buren Street. The proposed project would help to make Van Buren Street a 'complete street' with bicycle, pedestrian and traffic calming improvements.

Vice Mayor Hutchinson thanked staff for the clarification regarding the location of the project. She stated that she was not comfortable adding the project on Old Spring/Van Buren streets to the CIP until the town knows which traffic calming measures would be included and after it holds neighborhood meetings.

In response to Vice Mayor Hutchinson's comments, Ms. Gilleran stated that the money allocated for the Old Spring/Van Buren Street project was for conceptual work, including a survey. She stated that staff would work together to engage the public as this project moves forward.

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

- Ann V. Null 631 Oak Street, Herndon, stated this is an important plan with a lot of questions and urged deferral of the proposed resolution.

**Main Motion**

**(SUBSEQUENTLY AMENDED)**

Following the public hearing, Councilmember Olem moved approval of resolution 14-G-39, to approve the FY 2015 – 2020 Capital Improvement Program. This motion was seconded by Councilmember Jonas.

Councilmember Olem stated that she recalled sitting through several meetings where Council discussed the CIP projects in detail and that she was comfortable supporting the CIP.

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Councilmember Jonas echoed Councilmember Olem's comments and stated that it is interesting to see projects move up forward the CIP. She stated that it often takes money to begin studying projects and she appreciated staff's time and efforts in putting the CIP together.

**Substitute Motion**                      **(FAILED)**

Vice Mayor Hutchinson moved to continue the public hearing on resolution 14-G-39 to May 27, 2014. This motion was seconded by Councilmember Waddell.

Vice Mayor Hutchinson stated that the Council has concentrated on the CIP for FY 2015 and that she would appreciate more time to look at the out years. She stated that once a project is added to the CIP it is difficult to remove. She wants to ensure that the projects in the out years are ones that the Council wants to fund.

Councilmember Waddell stated that some projects in the CIP should be removed or altered. He would like to review the proposed CIP at a work session.

The question was called on the motion, which failed by a vote of 3-4. The vote was:

Vote: Councilmembers Kirby, Waddell and Vice Mayor Hutchinson voting "Aye." Councilmembers Jonas, Olem and Wolf and Mayor Merkel voting "Nay."

**Amendment to**                      **(APPROVED)**  
**Main Motion**

Councilmember Waddell moved to amend the main motion to:

- Remove page IV-15, Project 11-CD-14-002, "Downtown Interactive Feature" (removes \$25k from 2015-2016 and "TBD" from 2016-2017).

This motion was seconded by Vice Mayor Hutchinson.

For clarification, Mayor Merkel stated the amendment removes the "Downtown Interactive Feature."

The question was called on the motion, which carried by a roll call vote of 5-2. The vote was:

Vote: Councilmembers Jonas, Kirby, Waddell, Wolf and Vice Mayor Hutchinson and voting "Aye." Councilmember Olem and Mayor Merkel voting "Nay."

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**Vote on Main Motion (APPROVED)  
as Amended**

Mayor Merkel restated the main motion, as amended, which approves resolution 14-G-39 and removes the "Downtown Interactive Feature."

The question was called on the motion, which was carried by a vote of 6-1. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell and Wolf and Mayor Merkel voting "Aye." Vice Mayor Hutchinson voting "Nay."

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**14-G-39      Resolution, Adoption of the FY2016 through FY2020 portion of the FY2015-FY2020 Town of Herndon Capital Improvement Program.**

**WHEREAS,** the Town Manager of the Town of Herndon, Virginia caused the development and submission of the proposed FY2015-FY2020 Capital Improvement Program through the Planning Commission and the Town Council of the Town of Herndon; and

**WHEREAS,** the Planning Commission held public hearings on the proposed FY2015-FY2020 Capital Improvement Program on January 6, 2014, February 3, 2014 and April 7, 2014 ; and

**WHEREAS,** the Planning Commission recommended a Capital Improvement Program to the Town Manager on April 7, 2014; and

**WHEREAS,** the Town Manager reviewed the Planning Commission recommendation and developed a similar recommendation on April 1, 2014 as part of the FY2015 Annual Budget proposed to the Town Council; and

**WHEREAS,** on April 22, 2014, the Town Council adopted the Fiscal Planning Resolution for the FY2015 Annual Budget, including the Capital Improvement Program; and

**WHEREAS,** the Town Council held a public hearing on the FY2016 through FY2020 portion of the FY2015-FY2020 Capital Improvement Program on May 13, 2014.

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

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1. Adopts funding for the FY2015 portion of the FY2015-FY2020 CIP on April 22, 2014 for a total of \$4,520,000 for capital projects; and
2. Approves and adopts the FY2016 through FY2020 portion of the FY2015-FY2020 CIP, as reflected in Attachment 2, incorporated by reference, which includes the FY2015 - FY2020 CIP Summary Sheets and Financial Table 8, dated May 13, 2014. This approval action includes removal of the Town Manager's recommended Project Sheet #15 Downtown Interactive Feature and adjustment to FY2016 total funding and grand total funding at all locations in the CIP document.

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**8. CONSENT AGENDA ITEM CONSIDERED SEPARATELY**

Earlier in the meeting, with the concurrence of Council, Vice Mayor Hutchinson asked that Resolution 14-G-40 (Memorandum of Understanding re. Rotary Club's "Little Free Library") be removed from the consent agenda for separate consideration.

**Resolution 14-G-40, to approve a Memorandum of Understanding (MOU) between the Town and the Rotary Club of Herndon for installation, operation and maintenance of "Little Free Library" receptacle locations on Town owned land.**

Town Attorney, Richard B. Kaufman, presented the staff report, which is on file in the Town Clerk's office. He stated that the proposed resolution was an agreement between the Rotary Club of Herndon and the Town of Herndon, similar to a franchise, which would allow a private entity to use public space. He stated that this was not a formal franchise document because the term would be for only two years. The resolution would allow the Rotary Club to put up a decorative device approximately two feet by three feet in size in public areas of the town. The first such device would be placed at the south end of the Depot and the other three would be built at the discretion of the Town Manager, in accordance with the MOU. The purpose of these devices would be to allow individuals to add and/or borrow books and the Rotary Club would be responsible to maintain them. Either party could terminate the arrangement on 30 days' notice of the other. He stated that on termination of the agreement, the Rotary Club would remove the receptacles from town property. Staff recommends approval of the proposed resolution, as presented.

Councilmember Wolf stated that she would applaud the idea, if it was properly administered. She stated it would be helpful to see a picture of the little library

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and to see where the other devices would be located. She stated that she would like to allow public comment on this item and was concerned about the maintenance. She would also be concerned about the age appropriateness of the item and what else might be put in the box.

Responding to Councilmember Wolf, Mr. Anselene stated that the design for the little library was going before the HPRB for approval. He stated that the maintenance schedule and appropriateness of materials were included in the MOU. He stated that the Rotary Club did not know where the other locations would be and could be located on private property. He stated that he could provide additional information of the design.

Vice Mayor Hutchinson asked if these were different from the recently prohibited donation drop-off boxes?

In response to Vice Mayor Hutchinson, Mr. Kaufman stated that the MOU did not include the term box, but rather used the term 'receptacle.' He stated that this is a small structure and would not be considered a zoning use.

Vice Mayor Hutchinson stated that the proposed MOU did not include specifics, like height.

Councilmember Olem stated that the Rotary Club of Herndon started the Dolly Parton Imagination Library, where children receive books free through age five. She stated this was an extension of this project, which has worked around the country. She stated this would not be the same as having the big donation drop-off boxes and that the Rotary Club would keep up with managing the little libraries.

Councilmember Wolf stated that she is comfortable with the Rotary Club administering the libraries, but she would request that the Rotary Club stay on top of managing the books in the libraries.

Councilmember Jonas inquired about the general size of the little library?

In response to Councilmember Jonas, Mr. Anselene stated that they would be roughly three feet high and would be mounted on a post that would be American Disabilities Act (ADA) accessible.

Councilmember Kirby stated that the examples he saw looked like large birdhouses. He suggested the term for the MOU be one year instead of two.

Mayor Merkel stated that the website [littlefreelibrary.org](http://littlefreelibrary.org) has a lot of information on these libraries. She stated that she would hope the Rotary Club would manage the books well and that the town could terminate the agreement if necessary. She stated that she fully supports the proposed resolution.

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Following discussion, Councilmember Jonas moved approval of Resolution 14-G-40, to approve a Memorandum of Understanding (MOU) between the Town and the Rotary Club of Herndon for installation, operation and maintenance of "Little Free Library" receptacle locations on town owned land. This motion was seconded by Mayor Merkel.

Councilmember Jonas stated that anything the town could do to promote literacy was a good idea. She stated that she is consistently impressed with what the Rotary Club does for the town and expressed full confidence in the organization.

Councilmember Olem stated that the Rotary Club holds itself to very high standards and would not want its name to be smeared in any way as related to the free libraries. She stated that she has confidence that the Rotary Club would do an excellent job managing the libraries.

Vice Mayor Hutchinson stated that she was not questioning the Rotary Club's ability to carry out this program or to promote literacy. She stated that Mr. Kaufman addressed her concern, which was the avoiding the term 'drop box,' as related to the prohibition of drop boxes.

Councilmember Waddell asked if the libraries would include e-books?

Responding to Councilmember Waddell, Mayor Merkel stated that the receptacles would not include e-books.

The question was called on the motion, which carried by a unanimous vote. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell and Wolf, Vice Mayor Hutchinson and Mayor Merkel voting "Aye."

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**14-G-40      Resolution, Approving a Memorandum of Understanding between the Town and the Rotary Club of Herndon for the installation, operation, and maintenance of "Little Free Library" receptacle locations on Town owned land.**

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

1. Pursuant to §15.2-2100, Virginia Code, the Town Council approves a Memorandum of Understanding (MOU) dated April 11, 2014 between the Town of Herndon and the Rotary Club of Herndon (Rotary). Under the terms of the MOU Rotary may install, operate and maintain a maximum of four "Little Free Library" receptacles on Town owned land, to

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which the Town consents. The receptacle equipment shall meet all applicable Zoning, architectural, Heritage Preservation District, or traffic safety standards, though the Town Council does not seem such a minimal structure a zoning use.

2. The term of this MOU is May 31, 2014 through May 31, 2016. In the absence of a negotiated renewal, the MOU will automatically renew for one additional two-year term. Either party may terminate the MOU upon 30 days written notice to the non-terminating party.
3. The Mayor is authorized to sign and deliver the MOU dated April 11, 2014 on such form approved by the Town Attorney.
4. The Town Manager is authorized to approve a maximum of four "Little Free Library" locations on Town owned land.
5. This resolution shall be in effect on and after the date of its adoption.

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING dated April 11, 2014 between the TOWN OF HERNDON, VIRGINIA a municipal corporation (Town) and the ROTARY CLUB OF HERNDON, a Virginia non-profit corporation (Rotary).

Rotary is a charitable organization that provides services to the residents of the Town of Herndon, Virginia and of the surrounding communities and jurisdictions.

In consideration of \$1.00 paid by each party to the other, and of the mutual benefits and obligations of this memorandum of understanding ("MOU"), the parties agree as follows:

1. Purpose. The purpose of this MOU is to define the relationship between the Town and the Rotary in the establishment of "Little Free Library" ("free library") receptacles at up to four locations on Town owned land.

2. Equipment. Rotary will provide, install, operate, and maintain all library receptacles necessary for the establishment of each free library. All such equipment must be approved by the Town's Town Manager, adhere to zoning,

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architectural, Heritage Preservation District, or traffic safety standards, though the Town does not consider such a minimal use a zoning use. Any receptacle that does not meet such standards may be removed by the Town with at least ten days notice to Rotary.

3. Use. The free library is to be used solely for the purpose of exchanging books between residents of the Town and the surrounding communities and jurisdictions. All other uses are prohibited by this MOU and will result in the immediate termination of this MOU.

4. Maintenance. Rotary will be responsible for the upkeep and maintenance of each free library receptacle located on Town owned land. Rotary shall maintain the free receptacle and on a daily basis clear the receptacle area of any books, boxes, bags of books, or refuse which may not be contained within the free library receptacle. Rotary shall be responsible for and immediately reimburse the Town for any costs the Town may incur resulting from the improper use and maintenance of a Rotary free library receptacle.

5. Locations. The initial location will be adjacent to and south of the Depot planter bed located in Town Hall Square, outside of the Herndon Depot building, and being a part of Fairfax County tax parcel 016-2-02-0023. This location, and a maximum of three additional locations, may be permitted by the Town upon approval of the Town Manager. Each additional location shall be on Town owned land and subject to the terms of this MOU.

6. Assignment. This MOU may not be assigned.

7. Term. The term of this MOU is May 31, 2014 through May 31, 2016. In the absence of a negotiated renewal, this agreement will automatically be renewed for one two-year period, at the end of which the MOU shall expire.

8. Termination. Either party may terminate the MOU on 30 days written notice to the non-terminating party.

9. Removal. Upon termination or expiration of this MOU, Rotary on Town's demand shall at once remove the receptacles.



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TOWN OF HERNDON, VIRGINIA

By \_\_\_\_\_

Lisa C. Merkel, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

ROTARY CLUB OF HERNDON

By \_\_\_\_\_

Robert Benedict, President

APPROVED AS TO FORM:

*Richard B. Kaufman*

\_\_\_\_\_  
Richard B. Kaufman  
Town Attorney

**9. CONSENT AGENDA CONTINUED**

**Resolution, 14-G-41, Award of Contract IFB #14-06, Bulk Bituminous Asphalt**

Councilmember Olem moved approval of the referenced item on the "Consent Agenda" without comment. This motion was seconded by Councilmember Wolf and carried by a unanimous vote. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell and Wolf, Vice Mayor Hutchinson and Mayor Merkel voting "Aye."

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**14-G-41      Resolution, Award of Contract, IFB #14-06, Bulk Bituminous Asphalt.**

**WHEREAS,** an Invitation for Bid was issued for Bulk Bituminous Asphalt to establish a term contract for the purchase of bulk asphalt on an as-needed basis to be picked up by the Town Shop; and

**WHEREAS,** the Invitation for Bid was posted March 20, 2014 on the eVA Commonwealth of Virginia procurement website to maximize fullest competition; and

**WHEREAS,** one bid was received on April 16, 2014; the bid was responsive and responsible; therefore, the bid award was based on lowest unit cost and only one vendor with the results as follows:

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<u>Contractor</u>	<u>Description</u>	<u>Amount/Unit Price</u>
Superior Paving Corp.	Asphalt (surface)	\$58.00/ton
	Asphalt (base)	\$58.00/ton
	Asphalt (int)	\$58.00/ton
	Asphalt (cold)	\$125.00/ton
	Tack coat (gal)	\$3.00/gal
	Tack coat (5gal)	\$55.00/bucket

**WHEREAS,** Superior Paving Corp. offered the only bid; and

**WHEREAS,** funds are available to purchase the asphalt material bid items at the unit cost established by this contract are available in the following account: 001-0886-441.20-35; and

**WHEREAS,** other Budget and Reserve accounts as needed will be used to fund the purchase of asphalt under this contract.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Herndon, Virginia, hereby awards Contract #14-06 to **Superior Paving Corp** for Bulk Bituminous Asphalt

**10. ADJOURNMENT**

There being no further business, the meeting adjourned at 10:13 p.m.

*Lisa C. Merkel*

\_\_\_\_\_  
Lisa C. Merkel  
Mayor

*Amanda M. Kertz*

\_\_\_\_\_  
Amanda M. Kertz  
Deputy Town Clerk I

*Minutes approved by Town Council: July 8, 2014.*