TOWN OF HERNDON STREETERY PILOT PROGRAM RULES AND REGULATIONS

1. Administrative approval required for Streetery.

In accordance with the Code of Virginia § 15.2-2009, as amended, the town council hereby authorizes the director of community development and the director of public works or their designee, upon application to the department of community development, to administratively approve streetery seating areas that encroach into public rights-of-way and other public places subject to the terms and conditions more specifically described below. Furthermore, the town council hereby authorizes the director of public works to enforce the provisions of these regulations.

If an application for a streetery encroachment does not meet all of the criteria of paragraph 3, then the directors of public works and community development or their designees are prohibited from administratively approving the encroachment application, which said application must be denied.

2. Streetery Permit; definitions.

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

ABC means the Virginia Department of Alcoholic Beverage Control.

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

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

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

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

Principal operator means the person or entity that operates an establishment.

Public shared parking spaces means as defined in section 78-180 of the zoning ordinance but specifically exclude public shared parking spaces located on public streets.

Public parking means for the purpose of this program, parking spaces located in public right-of-way (on-street parking spaces) or, in a public street easement, but specifically excluding public shared parking spaces.

Public right-of-way means for the purpose of this program, dedicated and otherwise acquired public right-of-way and public street easements having the characteristics of a municipal public street for the purpose of public travel and other uses consistent with a public municipal street.

Public shared parking seating area means an area on a public shared parking space to be used for a streetery associated with an adjacent eating establishment.

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

Streetery means any outdoor group of tables, chairs, or other seating fixtures and all related appurtenances maintained within the public sidewalk, or other right-of-way when located adjacent to an eating establishment having the same principal operator. A streetery is typically an extension of an existing eating establishment's "dining room" and is not considered a public space. Further, a streetery shall be temporary in nature, shall not be permanently affixed so as to extend below the sidewalk or other right-of-way, must not involve penetration of the sidewalk or right-of-way surface or be attached to any building, and shall be

readily removable without damage to the surface of the sidewalk or other right-of-way. The term for the extended streetery pilot program will be from January 28, 2025 to November 30, 2025 after which time the town council will evaluate the streetery program and make any changes it deems necessary.

Right-of-way seating area means an extension of the sidewalk into the parking lane on a public right-of-way or public street easement to be used for a streetery associated with an adjacent eating establishment. The establishment of a right-of-way seating area for eligible eating establishments is limited to Lynn Street, Pine Street, Station Street, and the 700 block of Center Street.

Sidewalk seating area means an area on a public sidewalk or public streetscape easement to be used for a streetery associated with an adjacent eating establishment.

3. Requirements.

(a) *Permit required; enforcement.* Subject to the provisions of these regulations a streetery may encroach into a portion of the public sidewalk, public right-of-way, or public shared parking only upon issuance of a streetery permit as provided for in these regulations. No other use of the area devoted to a streetery shall be permitted. It shall be the responsibility of the director of public works to enforce the provisions of these regulation. A streetery permit shall not be transferable to another principal operator or location.

(b) *Application requirements.*

(1) Application for a streetery permit shall be made to the director of community development on such application form and subject to such written procedures as the director may establish. Application for a streetery permit shall be made by the principal operator of an eating establishment that is located at street level adjacent to the proposed streetery. The application shall be signed by principal operator of the eating establishment and by the owner of the property on which the eating establishment is located if the property owner is not the eating establishment operator.

(2) Streetery areas whether in a sidewalk or public right-of way, must comply with all streetery requirements, which address the allowed locations, design requirements, safety, and maintenance responsibilities that are approved by the directors of community development and public works. The use of tents with or without sides are prohibited due to the safety hazard presented by impeding the site distance for vehicles operating around the streety areas. A streetery located in a public shared parking area may have a tent with a minimum 7-foot overhead clearance provided it does not impede visibility for vehicles operating around the streetery. Umbrellas must have a minimum 7-foot overhead clearance and be securely weighted. Signs are prohibited on umbrellas.

(3) Application fee. A nonrefundable application fee of $100.00 shall accompany each application for a streetery permit.

(4) Term of permit. A streetery permit is limited to a period beginning March 15, 2025 through November 30, 2025. A streetery permit shall be valid until the time stated in the permit, the establishment ceases operation, the permit is suspended, or the permit is revoked.

(5) Fees for use of public right-of-way or public share parking shall be $1.00 per square foot per term for the first two parking spaces and shall be $5.00 per square foot per term for the third and fourth parking spaces. The fees for use of the public sidewalk shall be $1.00 per square foot per term.

(c) *Limitations on right-of-way seating areas.* An eating establishment shall be limited to the permitted use of four public parking spaces per establishment. At any one time, the town shall limit the total number of issued permits for a streetery to no more than 30 percent of the total parking spaces along a street block. Permits will be issued based on the order of complete applications received. (d) *Limitations on use of public shared parking.* An eating establishment shall be limited to the permitted use of four public shared parking space per establishment, however the use of public shared parking spaces can

only be used for streetery seating if the parking spaces have not been allocated through the public shared parking program pursuant to section 78-100.7 of the zoning ordinance.

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

(e) *Liability insurance and indemnity.* Prior to approval of any streetery permit, the applicant shall submit a certificate of liability insurance in such amounts and such coverages as may be required by the risk manager, naming the Town of Herndon as an additional insured in a form satisfactory to the risk manager.

(f) *Fees and taxes to be paid.* All Town of Herndon fees and taxes required by law and applicable to the eating establishment, or to the property on which the eating establishment is located, shall be paid in full and all required town licenses shall be current prior to approval of a streetery permit.

(g) *Encroachment agreement.* Prior to the approval of a streetery permit the applicant shall submit an executed encroachment agreement, incorporating all terms and conditions imposed by town staff and in a form approved by the town attorney or their designee, which shall include but not be limited to provisions regarding insurance and indemnification as may be required by the risk manager.

4. Review process.

(a) After a complete application, including all required materials as set forth in paragraph 3 is submitted, the director of community development and the director of public works shall jointly approve the streetery permit, approve the streetery permit with conditions, or deny the streetery permit.

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

(1) The eating establishment is properly licensed and lawfully located in a PD-TD, Planned Development Traditional Downtown, PD-D, Planned Development Downtown, or CC, Central Commercial zoning districts;

(2) The proposed streetery complies with the uniform statewide building code, state and local fire codes, state and local health codes, and all applicable provisions of federal, state, and local law, including these regulations;

(3) The proposed streetery complies with all streetery requirements;

(4) The public sidewalk maintains 60 inches passage way to back of curb and 36 inch passage around any sidewalk obstruction;

(5) The eating establishment complies with ADA requirements for the indoor and outdoor streetery areas. This includes required ADA access within the streetery area;

(6) The proposed streetery will not unreasonably interfere with the normal use of town property by the town or general public, and does not present a safety, health, or environmental hazard; and

(7) The proposed streetery shall not block egress from the adjacent buildings, block or hinder access to any fire hydrant, fire lane or fire department hose connection.

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

5. Changes to approved permit.

No material change to an approved streetery permit shall be made without prior written approval by the director of community development and the director of public works, provided that the director of public

works may modify an approved permit if they find there is a public need relative to use of the adjacent sidewalk area or right-of-way.

6. Enforcement, revocation and suspension.

(a) *Generally.* Operation of streetery is a licensed privilege granted by the Town of Herndon to occupy a portion of the public right-of-way or public shared parking and is predicated on the streetery being operated in compliance with all applicable regulations and on maintaining the superseding public interest in the use of public rights-of-ways in the town and shall be revocable at the pleasure of the town council.

(b) *Administrative revocation of approved permit by the director of public works.*

(1) The director of public works shall have the authority to revoke an approved streetery permit if any of the following occurs:

a. The applicant has misrepresented facts or provided false information in the streetery permit application;

b. The streetery is operated in violation of the terms or conditions of the streetery permit, encroachment agreement, or ABC regulations;

c. The streetery or the eating establishment is operated in violation of the zoning ordinance, town code, or other applicable federal, state or local law;

d. The streetery constitutes a public nuisance or a hazard to the public health, safety, or welfare of the public, or is endangering the life or property of others;

e. The eating establishment has delinquent taxes, unpaid fees, or has not maintained all licenses necessary for operation of the eating establishment and streetery; or

f. The director of public works determines that there is a superseding public need relative to the portion of the public sidewalk, public right-of-way, or public shared parking space(s) occupied by or otherwise affected by the streetery, including but not limited to: 1) work or repair in the public sidewalk or public right-of-way areas, or 2) need of access for work or repair to a public facility or public utility or 3) if a development applicant has voluntarily proffered or chosen to participate in the public shared parking program and the only remaining spaces are occupied by a streetery.

(2) The director of public works shall provide written notice that shall be reasonable under the circumstances to the principal operator and owner of the property where the eating establishment is located setting forth the effective date of the revocation and the grounds therefor. Such revocation shall not be appealable.

(3) In the case of revocation of a streetery permit on grounds other than specified in paragraph (b)(1)f of this subsection, the principal operator of the streetery shall not be permitted to re-apply for an administrative streetery permit to operate a streetery area for the same establishment within one year of revocation.

(c) *Administrative suspension of an approved permit by the director of public works.*

(1) The director of public works shall have the authority to suspend an approved streetery permit for a period of up to 30 days, or such longer period as may be necessary, if any of the conditions of paragrph (b)(1) occur.

(2) The director of public works shall provide written notice to the principal operator setting forth the effective date of the suspension, the length of the suspension, and the grounds therefor.

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

7. Marking of Streetery area for inspection.

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

8. Appeal of denial, of permit, or Administrative Suspension.

A person aggrieved by the denial of an application for a Streetery Permit or an Administrative Suspension of a Streetery Permit shall have the right to appeal to the Town Manager. The appeal shall be made in writing to the Town Manager within 72 hours from the receipt of the written denial or suspension. The written appeal shall state the reasons for the appeal. Town Manager shall review the appeal and issue a written decision within five business days of its receipt.