

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

KRISH KARUNAKARAM
1514 Summerset Place
Herndon, Virginia 20170-3936

M. McDOWELL
1407 Horizon Court
Herndon, VA 20170-3934

SUSAN M. POWELL
419 Madison Forest Drive
Herndon, Virginia 20170-3330

WILLIAM B. SMITH and
CHERYL I. SMITH
902 Broad Oaks Drive
Herndon, Virginia 20170-3600

GEORGE A. TAPLIN
1402 Rainbow Court
Herndon, Virginia 20170-3900

And

All Others Similarly Situated

Plaintiffs,

v.

Chancery No. _____

TOWN OF HERNDON,

Defendant.

CH 2005 4013

BILL OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF ACTION

1. Plaintiffs, taxpayers and residents of the Town of Herndon, bring this action to enjoin the use of taxpayer-financed resources to establish a “Day Laborer Site” in the Town of Herndon and for a judgment declaring establishment of the site to be unlawful.

PARTIES

2. Plaintiff Krish Karunakaram is a resident and taxpayer of the Town of Herndon. Mr. Karunakaram has paid taxes to the Town of Herndon and will be injured by the Town of Herndon’s planned expenditures in furtherance of the Day Laborer Site.

3. Plaintiff M. McDowell is a resident and taxpayer of the Town of Herndon. Mr. McDowell has paid taxes to the Town of Herndon and will be injured by the Town of Herndon’s planned expenditures in furtherance of the Day Laborer Site.

4. Plaintiff Susan M. Powell is a resident and taxpayer of the Town of Herndon. Ms. Powell has paid taxes to the Town of Herndon and will be injured by the Town of Herndon’s planned expenditures in furtherance of the Day Laborer Site.

5. Plaintiff William B. Smith is a resident and taxpayer of the Town of Herndon. Mr. Smith has paid taxes to the Town of Herndon and will be injured by the Town of Herndon’s planned expenditures in furtherance of the Day Laborer Site.

6. Plaintiff Cheryl I. Smith is a resident and taxpayer of the Town of Herndon. Mrs. Smith has paid taxes to the Town of Herndon and will be injured by the Town of Herndon’s planned expenditures in furtherance of the Day Laborer Site.

7. Plaintiff George A. Taplin is a resident and taxpayer of the Town of Herndon. Mr. Taplin has paid taxes to the Town of Herndon and will be injured by the Town of Herndon’s

planned expenditures in furtherance of the Day Laborer Site.

8. Defendant Town of Herndon is a municipal corporation situated within Fairfax County, Virginia.

JURISDICTION AND VENUE

9. This action is a civil case in chancery seeking a declaratory judgment and an injunction against Defendant's unlawful acts. This Court has jurisdiction over this action pursuant to Virginia Code §§ 8.01-184, 8.01-620, and 17.1-513.

10. Venue is preferred in this County as provided by Virginia Code § 8.01-261(15)(c), because Plaintiff seeks the award of an injunction against acts being done in this County. Venue is permissible in this County as the Defendant Town of Herndon is located within this County and the cause of action arose within this County. Va. Code §§ 8.01-262(1) and (4).

STATEMENT OF FACTS

11. Plaintiffs bring this action on behalf of themselves and all other similarly situated taxpayers residing in the Town of Herndon. As the Supreme Court of Virginia has stated,

[A] citizen or taxpayer may challenge the legality of certain actions of a local government and its expenditures, because the interest of a citizen in matters of local government is direct and immediate, rather than remote and minute. . . . The direct and immediate interest of the citizen in the operation of local government, whether based on issues arising from a local election or a local government's exercise of its fiscal authority, permits these citizen or taxpayer challenges.

Goldman v. Landslide, 262 Va. 364, 375, 552 S.E.2d 67, 72 (2001) (citations omitted).

12. On August 17, 2005, the Town of Herndon, by and through its elected Town Council, approved an application for a conditional use permit sought by an organization known as Project Hope & Harmony ("PH&H") of Reston, Virginia. See Resolution, Application For A

Conditional Use Permit, C.U. #05-11 (“Permit”) (attached as Exhibit 1). On information and belief, PH&H was created by Reston Interfaith, a nonprofit organization founded, supported, and directed by area religious organizations.

13. The Permit provides for the creation of a “Temporary Regulated Day Worker Assembly and Hiring Site” (“Day Laborer Site”) on Town property. The Day Laborer Site will be located on the site of the Town of Herndon’s former police headquarters, at 1481 Sterling Road, Herndon, Virginia, identified on Fairfax County Tax Map 010-3-002, Parcel 7D.

14. The Permit provides for the use of taxpayer resources having a substantial dollar value, including, but not limited to, the rent-free use of public land. The Permit provides for PH&H to operate the Day Laborer Site without the payment of any rent or fees to the Town of Herndon. *See* Permit at 1.

15. On information and belief, PH&H and Reston Interfaith also have applied to Fairfax County for a grant of up to \$175,000.00 to operate the Day Laborer Site.

16. The Permit is valid for a period of two years, effective as of September 15, 2005, with up to three one-year extensions if granted by the Town Council. *See* Permit at 4, ¶ (s); Zoning Ordinance § 78-107.

17. The stated purpose of the Day Laborer Site is to provide an “assembly site where day laborers can congregate for the purpose of finding work.” *See* Town of Herndon, Virginia, Planning Commission Staff Report, Update Summary, dated August 11, 2005 (“Staff Report”), at 3.

18. At the present time, day laborers congregate at certain locations in Herndon and elsewhere for the purpose of finding work. Day laborers work most often in construction,

landscaping, painting, and janitorial services. Prospective employers drive to such locations, pick up laborers, and transport them to a work site.

19. After two lengthy hearings on August 1 and August 3, 2005, the Town's Planning Commission recommended against approval of the Permit by the Town Council. *See* Permit at 1.

20. The Day Laborer Site will provide a variety of employment services to persons who use the Day Laborer Site, including matching employers with laborers according to the laborers' respective skill sets, and establishing and enforcing a code of conduct for laborers and employers. *See* Permit at 2 ¶ (e); Staff Report at Attachment 3, page 10 and Attachment 5, para.

12. The Day Laborer Site also will provide a variety of other employment services, including "job training, language and literacy classes, job development, workers rights and immigration law assistance, and leadership development." *See* Permit at 7 ¶ (ae); Staff Report at Attachment 3, page 12 and Attachment 5, para. 12.

21. Upon information and belief, persons seeking employment at the Day Laborer Site predominantly will include undocumented workers and the Town Council knew this to be the case when it approved the conditional use permit for the Day Laborer Site.

22. The application for the Permit and the "Operating Policy and Procedures" indicate that the Day Laborer Site is intended to assist undocumented workers, *i.e.*, immigrants who entered the United States and reside in the United States in violation of the laws of the United States (*see* Staff Report at Attachments 3 and 5).

23. At the time the Town Council considered whether to approve the Permit, it was aware of a Fairfax County survey, taken in the Fall of 2003 and published in June 2004, relating to day laborers. *See* Dep't of Systems Management for Human Services, "An Account of Day

Laborers in Fairfax County,” June 2004 (“Fairfax County Survey”). The survey interviewed two hundred and one (201) day laborers at four (4) “informal” day laborer sites in Fairfax County, including a site in Herndon. *Id.* at 5. The results of the survey showed that the overwhelming majority of day laborers interviewed -- some eighty-five percent (85%) -- preferred permanent employment to day labor. *Id.* at 15. Of this eighty-five percent (85%), approximately eighty-five percent (85%) cited the lack of documentation as being a barrier to obtaining permanent employment. *Id.* These results demonstrate that a substantial majority of persons likely to use the Day Laborer Site lack the documentation to work legally in the United States because they would otherwise seek permanent employment. Significant use was made of the Fairfax County Survey by PH&H and the Town’s Planning Commission and Council during the application process.

24. When it approved the Permit, the Town Council was aware of the Fairfax County Survey and, therefore, reasonably knew that the Day Laborer Site would be used to assist persons not legally present or authorized to work in the United States.

25. Members of the Town Council who opposed granting the Permit openly stated at the Town Council meeting held on August 17, 2005, that spending money on a day laborer site would amount to an endorsement of illegal immigration. *See The Washington Post*, “Herndon Approves Day Labor Center: Immigration Called ‘Out of Our Control,’” August 18, 2005, at A1. One Town Council member recognized the problem of illegal immigration was inextricably linked with the Day Laborer Site, stating “[h]ere we sit, expecting this local government to resolve a national immigration problem that is out of our control.” *Id.*

26. The Permit requires that information be distributed to prospective employers at the Day Laborer Site informing them that hiring illegal aliens is unlawful. *See The Washington Post*, “Herndon Approves Day Labor Center: Immigration Called ‘Out of Our Control,’” August 18, 2005, at A1.

27. Nonetheless, the Permit contains no provision requiring PH&H to screen persons seeking employment at the Day Laborer Site to determine whether, in fact, they are eligible to work in the United States. PH&H has stated publicly that it will not screen persons seeking employment at the Day Laborer Site to determine whether, in fact, they are eligible to work in the United States. *See The Washington Post*, “Herndon Approves Day Labor Center: Immigration Called ‘Out of Our Control,’” August 18, 2005, at A1.

28. Virginia law states that any action taken by a municipality must be consistent with federal and state law:

The Constitution and the law of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth.

Va. Code § 1-248 (effective October 1, 2005; previously codified in substantially similar form at Va. Code § 1-13.17).

29. Federal law prohibits employers from hiring undocumented workers. It is unlawful to recruit or hire an alien if it is known that the alien is not authorized to work in the United States. 8 U.S.C. § 1324a(a)(1)(A). It also is unlawful to hire any individual for employment in the United States without complying with federal employment eligibility verification requirements. 8 U.S.C. § 1324a(a)(1)(B)(i). Federal law also makes it illegal to

“encourage or induce an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.” 8 U.S.C. § 1324(a)(1)(A)(iv). Aiding or abetting the commission of such acts also is a violation of federal law. 8 U.S.C. § 1324(a)(1)(A)(v)(II).

30. Federal law also prohibits conspiracies to violate the law of the United States:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 371.

31. It is also unlawful to aid or abet a violation of federal law or cause an act to be done by a third party, which, if done directly, would be unlawful:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 2.

32. In addition, the Virginia General Assembly has adopted a statute prohibiting public assistance to illegal aliens. *See* Va. Code § 63.2-503.1. Effective January 1, 2006, the statute provides, in pertinent part, that “no person who is not a United States Citizen or legally present in the United States shall receive state or local public assistance pursuant to this subtitle,

except for state or local public assistance that is mandated by Federal Law pursuant to 8 U.S.C. § 1621.” *Id.* at § 63.2-503.1(A). In addition, the statute requires, in pertinent part, that any person seeking public assistance “provide affirmative proof that he is a U.S. citizen or is legally present in the United States.” *Id.* at § 63.2-503.1(B). “Public assistance,” as defined by Va. Code § 63.2-100, includes “employment services.”

33. Under Virginia law, a municipal corporation has only those powers that are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable. *Arlington County v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000). Furthermore, if the state legislature grants a local government the power to do something but does not specifically direct the method of implementing that power, the method selected by the local government must be reasonable. *Id.*

34. The Town of Herndon’s zoning ordinance § 78-107(11) requires that “[a]ll activities conducted on the site shall be carried out in a lawful manner, as determined by competent town, Virginia, or federal authorities.”

35. Zoning ordinance § 78-91 states that the Day Laborer Site must include the following conditions: (1) that the proposed use must not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use; or (2) that the proposed use must not be detrimental to the public welfare or injurious to property or improvements to the neighborhood. *See* Staff Report at 7-8.

36. When a municipality’s decision to issue a conditional use permit is challenged, a court reviews the decision to determine whether the issuance of the permit was arbitrary,

capricious, and unreasonable. The party challenging the decision must establish that the decision was unreasonable:

If the presumptive reasonableness of zoning action is challenged by probative evidence of unreasonableness, the challenge must be met with evidence of reasonableness. If such evidence of reasonableness is sufficient to make the issue fairly debatable, the legislative action must be sustained; if not, the presumption is defeated by the evidence of unreasonableness and the legislative act cannot be sustained.

Concerned Taxpayers of Brunswick County v. County of Brunswick, 249 Va. 320, 327, 455 S.E.2d 712, 716 (1995).

COUNT I

FIRST CAUSE OF ACTION FOR DECLARATION REGARDING ILLEGAL USE OF TAXPAYER FUNDS

37. Plaintiffs incorporate paragraphs 1 to 36, and each of them as if they were set forth in full.

38. Defendant's approval of the Permit establishing the Day Laborer Site, for the express purpose of facilitating employment of persons not legally present in the United States, contravenes federal law, including, but not limited to: 8 U.S.C. § 1324a(a)(1)(A); 8 U.S.C. § 1324(a)(1)(B)(i); 8 U.S.C. § 1324(a)(1)(A)(iv); 8 U.S.C. § 1324(a)(1)(A)(v)(II); 18 U.S.C. § 371; and 18 U.S.C. § 2.

39. Plaintiffs seek a judicial determination and declaration that the Permit is unlawful and void.

COUNT II

SECOND CAUSE OF ACTION FOR DECLARATION REGARDING VIOLATION OF VIRGINIA CODE § 63.2-503.1

40. Plaintiffs incorporate paragraphs 1 to 39, and each of them as if they were set forth in full.

41. The services to be provided at the Day Laborer Site constitute public assistance as “employment services,” as defined by Va. Code § 63.2-100. These services are intended to and will benefit persons not legally present in the United States. The Permit, therefore, is in violation of Va. Code § 63.2-503.1(A). In addition, because the Permit requires no proof of citizenship or legal status by persons using the Day Laborer Site, the Permit also is in violation of Va. Code § 63.2-503.1(B).

42. Plaintiffs seek a judicial determination and declaration that the Permit is in violation of Virginia law, including, but not limited to, Va. Code § 63.2-503.1 and is unlawful and void.

COUNT III

THIRD CAUSE OF ACTION FOR DECLARATION REGARDING ULTRA VIRES ACT

43. Plaintiffs incorporate paragraphs 1 to 42, and each of them as if they were set forth in full.

44. No Virginia statute expressly authorizes a municipality such as the Town of Herndon to establish a Day Laborer Site. The Permit creating the Day Laborer Site is therefore an *ultra vires* act.

45. Even if the authority to establish the Day Laborer Site arguably could be implied from powers granted to the Town of Herndon by Virginia law, the creation of the Day Laborer Site is not a reasonable method of implementing those powers.

46. As a result, a declaratory judgment should issue that the Day Laborer Site is an *ultra vires* act and unlawful and void.

COUNT IV

FOURTH CAUSE OF ACTION FOR DECLARATION REGARDING ARBITRARY, CAPRICIOUS, AND UNREASONABLE NATURE OF ACT

47. Plaintiffs incorporate paragraphs 1 to 46, and each of them as if they were set forth in full.

48. Defendant has, contrary to federal and Virginia law, including, but not limited to 8 U.S.C. § 1324(a)(1)(A)(iv) and 8 U.S.C. § 1324(a)(1)(A)(v)(II) and Virginia Code § 63.2-503.1, and without lawful authority, approved the Permit creating the Day Laborer Site.

49. Defendant also has violated zoning ordinance § 78-107(11) requiring that “[a]ll activities conducted on the site shall be carried out in a lawful manner, as determined by competent town, Virginia, or federal authorities.” Defendant also has failed to satisfy the conditions set forth in zoning ordinance § 78-91: (1) that the proposed use must not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use; or (2) that the proposed use must not be detrimental to the public welfare or injurious to property or improvements to the neighborhood. Despite these requirements, the Permit makes no provision for the violations of federal law and Virginia law that will take place on the Day Laborer Site or that will be facilitated by the existence of the site.

50. As it is contrary to federal law, Virginia Code § 63.2-503.1, and an *ultra vires* act, and as it is contrary to its own zoning ordinances, approval of the Permit by the Town of Herndon constitutes an arbitrary, capricious, and unreasonable act.

51. As a result, a declaratory judgment should issue that the Permit constitutes an arbitrary, capricious, and unreasonable act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

1. A declaration that the Permit is unlawful and void as violation of federal law, Va. Code § 63.2-503.1, an *ultra vires* act, and an arbitrary and capricious, and unreasonable act;
2. The Court issue permanent injunctive relief prohibiting Defendant from expending taxpayer resources in furtherance of the Permit and a Day Laborer Site;
3. Awarding Plaintiffs and their attorneys their costs and attorneys' fees;
4. Such other relief as to equity may seem just and the nature of the case may require.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,

DATED: September 1, 2005

By:



JUDICIAL WATCH, INC.

James F. Peterson
Va. Bar No. 36211
Paul J. Orfanedes
(Not a Member of the Virginia Bar)
501 School Street, S.W., Suite 500
Washington, DC 20024
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Attorneys for Plaintiffs

EXHIBIT 1

TOWN OF HERNDON, VIRGINIA

RESOLUTION

AUGUST 17, 2005

Resolution- Application for a Conditional Use Permit C.U. #05-11.

WHEREAS, the applicants, Hope and Harmony and Reston Interfaith, have submitted a request for a Conditional Use Permit to permit a temporary regulated day worker assembly site located at 1481 Sterling Road, Herndon, Virginia and identified as Fairfax County Tax Map Reference 010-3-002, Parcel 7D(E); and

WHEREAS, a temporary assembly site for day workers is defined in the Town of Herndon Zoning Ordinance, Town Code (2000) as a place where workers or potential workers assemble to seek or accept casual, intermittent, or temporary work off-site; where employers, or potential employers, visit to hire or to seek to hire workers for such work; and as to which the zoning approval is limited in duration. The temporary assembly site for day workers may be referred to as "the site"; and

WHEREAS, Project Hope and Harmony and Reston Interfaith are seeking funding from Fairfax County for the temporary assembly site for day workers, pursuant to Request for Proposal Number RFP06-805744-32; and

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

WHEREAS, the Planning Commission has recommended that the application be denied; and

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 §78-107 and §78-91.

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

1. The Town Council, upon recommendation by the Planning Commission, finds after a duly advertised hearing the use will not:
 - a. Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
 - b. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
 - c. Be in conflict with the purposes of the Comprehensive Plan of the Town; and
2. The Town Council hereby grants Conditional Use Permit #05-11, effective September 15, 2005, with the following conditions:

- a. The operating procedures dated 08/03/05 and as amended by these conditions are incorporated into this approval as a condition, and any change in the operational procedures shall require an amendment to this conditional use permit. It shall be the responsibility of Project Hope and Harmony, Reston Interfaith and the governance team to enforce the procedures.
- b. The site shall be open to laborers and the public from 6:00 a.m. to 11:00 a.m. Monday through Friday, and from 7:00 a.m. until 12:00 noon, Saturday and Sunday. Staff is allowed on site outside of these hours for the purposes of planning, reporting, troubleshooting and other work-related issues. The site shall not be open on the following Federal Holidays: New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving and Christmas.
- c. In addition to any other procedures and guidelines developed by the applicant and the Governance Team, the applicant shall inform each worker upon initial arrival and registration at the site that only public sidewalks and streets shall be used when coming to and from the site and that trespassing on private property is illegal and will not be tolerated. Furthermore, an aerial photo of the site shall be posted at the site indicating the preferred routes to the site.
- d. The applicant shall inform each employer coming to the site that, if they are providing workers a ride back from the employer's job site, the drop off point should not be the day labor facility but rather another point mutually convenient to the employer and laborer. Laborers may be dropped off at the day labor site for the purpose of retrieving a vehicle or bicycle left there. This information may be provided orally or in writing.
- e. The Code of Conduct, as set forth in the Project Hope and Harmony Operating Policies and Procedures, shall be enforced by the representatives of Project Hope and Harmony, Reston Interfaith and the governance team during operating hours. It is understood that as the site becomes operational and additional experience is gained the role of the governance team shall increase.
- f. To ensure safe and orderly conduct, the site shall be staffed all times while the site is in operation by at least 3 employees or volunteers of Project Hope and Harmony or Reston Interfaith, of which at least one must be a paid staff member.
- g. The governance team shall impose sanctions against workers identified by the Town of Herndon Police, Loudoun Sheriff's Department or Fairfax County Police as having trespassed on private property when coming or going to the site; and the governance team shall investigate and where appropriate impose sanctions against workers that are identified by members of the surrounding communities or the Town of Herndon staff as having trespassed on private property when coming or going from the site.
- h. The governance team shall impose appropriate sanctions against workers who are identified by the Town of Herndon Police, Loudoun Sheriff's Department or

Fairfax County Police as having remained at the site after closing or returned to the site after closing and remained longer than needed to retrieve their bicycle or vehicle, and the governance team shall investigate and where appropriate impose sanctions against workers that are identified by members of the surrounding residential or business communities or the Town of Herndon staff as having remained at the site after closing or returned to the site after closing and remained longer than needed to retrieve their bicycle or vehicle. In general, a worker who remains on the site for longer than one-half hour without a valid reason will be considered to have remained too long.

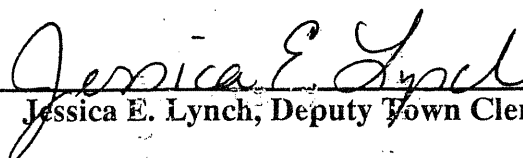
- i. Prior to commencement of the use and construction or installation of the facilities, as shown on the plan dated July 5, 2005, a site plan revision based upon T.P. #89-60 shall be submitted to the Town for administrative review and approval.
- j. The temporary day worker assembly site shall not be opened to workers and potential employers until the site plan has been approved, and all required building, zoning and Architectural Review Board approvals have been obtained and the trailer and portable restrooms have been installed, and an Employment Anti-Solicitation Ordinance is in place. The applicant shall have an additional 6 months to obtain all necessary approvals and complete construction of the remaining facilities.
- k. If the bicycle rack proves inadequate for the demand, a larger rack or an additional rack will be provided by the applicant. Prior to installation of the new rack, the applicant shall submit a letter to the Department of Community Development Director stating that an additional rack or a larger rack is being installed. The letter shall show the proposed location, which must be approved by the Department of Community Development Director.
- l. No more than one mobile commercial food vendor shall be permitted on the property at any one time. Any food vendor operating on the site shall be duly licensed by all appropriate agencies.
- m. The food vendor and his or her vehicle and equipment shall only be permitted on site during the program's standard operating hours.
- n. All pedestrian circulation and vehicular circulation areas shall be asphalt or concrete, with pavers or concrete to be used for a walk to the restrooms and in the vicinity of the bicycle rack.
- o. No more than 150 day workers shall be permitted on site at any one time.
- p. With the exception of traffic circulation into and out of the site, the area of operations shall be confined as shown on the plan dated July 5, 2005.
- q. All activities on site shall be carried out in a lawful manner, as determined by the appropriate and authorized town, Virginia, or federal authorities, including but not limited to the Herndon Police, Fairfax County Police, Virginia State Police, United States Department of Homeland Security, and United States

Department of Justice. Nothing in this condition shall be construed to suggest or require that the zoning administrator enforce any set of laws other than the town's zoning ordinance. The applicant shall make available to employers using the site information concerning:

- federal prohibitions against hiring aliens unauthorized to work in the United States; and
 - the related federal employment eligibility verification system.
- r. The site and any buildings or structures on the site shall be maintained in good order, free from litter or trash, and in a presentable, well maintained and safe manner, as determined by the zoning administrator and building official using recognized standards.
- s. The longevity of this use and use permit is limited to the time limits imposed by Section 78-107 of the Zoning Ordinance and shall be based upon the effective date of this resolution.
- t. The Governance Team shall provide the Town of Herndon Community Development staff with semi-annual reports indicating the number of workers and employers entering the site per week and the reason and nature of any sanctions imposed by the Governance Team.
- u. The number of lavatories available to the employees, participants and volunteers shall meet applicable State and local regulations.
- v. This conditional use permit shall expire within one year of its effective date if the proposed use has not commenced, unless the period of validity is extended, in accordance with Section 78-105 of the zoning ordinance.
- w. This conditional use permit 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 approved conditions.
- x. This conditional use permit runs with the land identified as Fairfax County Tax Map 010-3-002, Parcel 7D, and is not transferable to other properties.
- y. The adopted "Code of Conduct" shall prohibit laborers registered at the site from congregating and lingering outside of the non-designated portion of the property.
- z. Prior to the applicant's 3rd request for extension as allowed under the zoning ordinance, a proposed plan shall be provided for the relocation of the Temporary Assembly Site For Day Workers.
- aa. Trash collection services, including payment therefore, shall be the responsibility of the applicant.

- ab. Amend Policy 6 of Project Hope and Harmony's Operating Policies and Procedures to read: PH&H will convene a Community Advisory Board made up of a diverse group of Town of Herndon, adjacent Fairfax County and adjacent Loudoun County stakeholders including but not limited to an appointee selected by each of the following: the Town of Herndon Town Council, the Fairfax County Board of Supervisors, and the Loudoun County Board of Supervisors.
- ac. Amend Policy 6 of Project Hope and Harmony's Operating Policies and Procedures to specify what organizations in addition to those specified above shall be entitled to name members of the Community Advisory Board.
- ad. Prior to commencement of the hiring activity at the site, the applicant shall provide the Department of Community Development Director with the following: guidelines for equitable and appropriate distribution of employment opportunities, the Code of Conduct, and standard consequences and sanctions for trespassing on private property when coming to and from the site and being on the site for non-legitimate reasons. Project Hope and Harmony shall provide copies of any future amendments to these documents to the Director of Community Development prior to the amendment within two weeks of adoption of the amendment.
- ae. Employment related accessory uses limited to language classes, provision of work-related information and referrals to off-site services may be provided on site during standard operating hours to workers registered and waiting for work.
- af. If Project Hope and Harmony utilizes funds from Fairfax County, it shall comply with the requirements of Fairfax County for utilization of those funds and shall provide to the Town a copy of all written reports that are submitted to the County at the same time that they are submitted to the County.

This is certified to be a true and accurate copy of Resolution 05-G-107 adopted at a legally convened meeting of the Town Council of the Town of Herndon on August 17, 2005.



Jessica E. Lynch, Deputy Town Clerk