

**TOWN OF HERNDON, VIRGINIA**

**ORDINANCE**

**OCTOBER 27, 2020**

**Ordinance-** to amend Chapter 7 (ARTS DISTRICTS), to amend the definition of an Arts Business and to create a new definition for Arts Focused Redevelopment and establish new incentives for creation and support of new arts redevelopment projects.

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

1. The following section of the Herndon Town Code (2000), as amended, is amended and re-ordained as follows:

Chapter 7 - ARTS DISTRICTS

ARTICLE I. - IN GENERAL

Sec. 7-1. - Introduction, intent and purpose.

In accordance with Section 15.2-943.1 of the Code of Virginia, as amended, it is the purpose of this chapter is to create arts districts to attract new arts venues, support existing arts venues, and to encourage the expansion of existing venues in the town. These new, existing, and expanded businesses will increase the town's presence as a destination for arts activities, as well as the opportunities and benefits to town residents of arts offerings.

(Ord. No. 16-O-02, § 1, 1-12-2016)

Sec. 7-2. - Definitions.

When used in this chapter, the following terms shall have the meanings ascribed in this section:

*Arts business or organization* is a business or not-for-profit organization physically located within a town arts district where the principal use, defined as greater than 50% of the floor area, is used for arts instruction, media arts, performing arts, performing arts venue, visual arts creation or visual arts exhibit as defined herein. The term includes a museum and an arts office use. The business may engage in related, incidental retail sales, as an accessory use.

*Arts focused redevelopment* is a new redevelopment project physically located within a town arts district on or after October 27, 2020, and in the PD-TD - Planned Development – Traditional Downtown zoning district, where a minimum of 15% of the

ground-level gross floor area of the redevelopment project, exclusive of structured parking, is dedicated to qualified arts businesses or organizations including visual arts exhibits.

*Arts instruction* teaches individuals skills in the performing arts, media arts, or visual arts through experience, study, performance and assessment, providing participatory learning and engaging students with skilled artists, teachers, and art.

*Arts office* is an office use associated with an arts business or organization, such as performing arts events organization and promotion, or arts production.

*Business* shall have the same meaning as provided for in the business license tax in chapter 30 of this Code.

*District* means an arts district established pursuant to section 7-3 herein.

*Existing business or organization* is an arts business or organization which is physically located within the district prior to July 1, 2016.

*Expanded business or organization* is an existing arts business or organization which expands physically into new space within the district, to add at least 20 percent in gross square feet (enclosed or outdoors).

*Media arts* are film, video, audio and other forms of digital and Web-based media, including the production, exhibition, distribution, and preservation of the work.

*Museum* is a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or aesthetic purposes which, using a professional staff, owns or uses tangible objects, cares for them, and exhibits them to the public in a physical setting on a regular basis.

*New business* is a new arts business or organization physically located or locating in the district on or after July 1, 2016, which was not actively engaged in the conduct of trade or business in the district prior to the submission of a completed program qualification application. The new business or organization shall generate a new use of the land or building, and not the continuation of an existing use. An existing business or organization shall not qualify for incentives by reorganizing or changing its form in a manner that does not alter the basis of the business assets or result in a taxable event.

*Performing arts* are live music, theater, dance (excluding dance as exercise or fitness activity), and opera.

*Performing arts venue* is a place of indoor or outdoor public assembly for the presentation of the performing arts or media arts.

*Qualified arts business or organization* is an existing or new arts business, in an arts district that has successfully completed the process described in section 7-6 herein. Businesses providing personal services, including but not limited to a bank, real estate office or attorney's office; ~~or~~ a bowling alley; a brewpub; a restaurant; or a business intended primarily for exercise or fitness, are not eligible to be qualified arts businesses.

*Qualified arts focused redevelopment* is an arts focused redevelopment in an arts district that has successfully completed the process described in section 7-6 herein.

*Visual arts* are the arts of painting, photography, sculpture, printmaking, drawing, design, folk and traditional arts and craft.

*Visual arts exhibit* is a business or gallery or defined outdoor area within an arts focused redevelopment which displays the visual arts to visitors.

(Ord. No. 16-O-02, § 1, 1-12-2016)

Sec. 7-3. – Districts, establishment and boundaries.

There is hereby established a Downtown Herndon Arts District, consisting of all the area as shown on the map entitled "Herndon Arts District," dated January 12, 2016. The Herndon Arts District Map is hereby declared to be a part of this article and to have the same force and effect as if it was fully set forth and described herein. The Herndon Arts District Map shall be kept on file in the office of the community development department.

The town shall provide identifying signs or markings to delineate and identify any arts district created pursuant to this section.

(Ord. No. 16-O-02, § 1, 1-12-2016) ARTICLE II. - ARTS DISTRICT INCENTIVES

Sec. 7-4. - Waiver of fees.

- (a) A qualified arts business is afforded a 100 percent reduction of planning, zoning, and building permit application fees up to \$2,000.00 total for any single project incurred in the initial establishment of the business, or expansion of the business, in an arts district.
- (b) A qualified arts focused redevelopment is entitled to any eligible waiver of fees provided for in Section 7-4(a), or is afforded a 50 percent reduction in the water availability fees, sewer availability fees and building permit fees incurred in the initial establishment of the redevelopment project, whichever is greater.

Sec. 7-4.1 – Rebate of real property taxes.

- (a) A qualified arts focused redevelopment shall be entitled to an annual rebate of up to 100 percent of the real property taxes attributed to the total redevelopment project for the real estate property taxes due to the town for up to 10 consecutive calendar years. Year one is the calendar year in which the arts focused redevelopment becomes qualified if it is qualified prior to June 30 of the first year. Otherwise, year one shall be the year following the year in which the arts focused redevelopment is qualified. In the case of a multi-year incentives, an arts focused redevelopment shall establish its qualification for the incentives on an annual basis by January 1.

Sec. 7-4.2 – Exemptions from town zoning ordinance.

- (a) Notwithstanding a written proffer to the contrary, a qualified arts focused redevelopment shall be entitled to a reduction in the number of parking spaces required for multi-family residential uses to not less than 1.25 spaces per dwelling unit.
- (b) Notwithstanding a written proffer to the contrary, a qualified arts focused redevelopment shall be entitled to defer a per residential unit proffer contribution to the town for recreational amenities so that the total contribution shall be paid no later than 10 years from the date of approval of the application issued pursuant to section 7-6 herein.

(Ord. No. 16-O-02, § 1, 1-12-2016)

Sec. 7-5. – Signage.

A qualified arts business is eligible for any provisions described for arts districts in Chapter 78 of the Town Code.

(Ord. No. 16-O-02, § 1, 1-12-2016)

ARTICLE III. – ADMINISTRATION AND ENFORCEMENT

Sec. 7-6. - Applications.

- (a) The town manager or his designee will administer applications through the community development department. In determining eligibility for the incentives contained herein, the town manager or his designee shall be guided by this chapter.
- (b) A new or existing arts business or organization or an arts focused redevelopment seeking to obtain the incentives of an arts district will meet with the community development department staff and submit a completed qualification application. The community development department shall

perform an initial review of the business or project to determine if it qualifies for incentives and then forward the application and recommendation to the town manager or his designee. The town manager, or his designee acting as the agent of the town council, shall review the application and recommendation and make a final determination as to whether the business or project is qualified for the incentives herein.

- (c) The application shall be signed by an official officer, member, agent or representative of the business authorized to sign on its behalf.
- (d) If the town manager or his designee denies an application, he shall do so in writing stating the reasons therefore, and affording the applicant an opportunity to respond in writing or in person.

(Ord. No. 16-O-02, § 1, 1-12-2016)

Sec. 7-7. – Compliance with article.

A qualified arts business or organization or a qualified arts focused redevelopment that fails to pay in full any tax imposed by the town by the due date shall lose its incentive eligibility and its entitlement to any incentives afforded under this article until such taxes are paid in full.

Sec. 7-8. – Confidentiality.

To the extent permitted under the Virginia Freedom of Information Act, confidential business records shall be safeguarded from disclosure; provided, however, that as a condition of receiving the incentives provided herein, each applicant agrees to the release by the town of the monetary value of any incentive received. This agreement shall appear prominently upon the application for incentives and each signature upon an application shall bind the applicant to this condition.

(Ord. No. 16-O-02, § 1, 1-12-2016)

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

**This is certified to be a true and accurate copy of Ordinance 20-O-60 adopted at a legally convened meeting of the Town Council of the Town of Herndon on October 27, 2020.**

*Margie C. Tacci*  
**Margie C. Tacci, Deputy Town Clerk**