

ORDINANCE #11-01

AN ORDINANCE ESTABLISHING AN ARTS AND CULTURAL DISTRICT IN THE CITY OF WILLIAMSBURG

WHEREAS, Code of Virginia (1950), as amended, §15.2-1129.1 provides for the creation of an Arts District, which may include offering certain economic incentives for arts-related businesses locating therein; and

WHEREAS, the City Council desires to promote art and culture in the City of Williamsburg by the facilitation of an environment within the City wherein artists can live and work, thus positively influencing the lives of Williamsburg residents and visitors, and enhancing the City's economy; and

WHEREAS, the City Council for the City of Williamsburg has determined that it would be advantageous and appropriate to establish an Arts and Cultural District within the City in order to facilitate the co-location of arts businesses within an area of the City by creating such a district; and

WHEREAS, in order to encourage qualified arts businesses to locate within the district, City Council has determined that the City shall offer certain economic incentives to qualified arts businesses which locate within the designated Arts District; and

NOW, THEREFORE, BE IT ORDAINED that in furtherance of the above-stated desire and intent of City Council, Chapter 3 of the Code of the City of Williamsburg is hereby amended and restated as follows:

CHAPTER 3. AMUSEMENTS. REPEALED.

CHAPTER 3. ARTS AND CULTURAL DISTRICT

Sec. 3.1. Arts and Cultural District; purpose and establishment.

City Council recognizes that human creativity is critical to the City's future economic success. Arts and culture-related businesses and organizations add cultural and economic diversity to the City; enhance the lives of the City's residents and visitors and positively impact the City's economy by generating jobs and revenue and retaining a competitive workforce. Thus, in Council's opinion, it is important to encourage co-location of arts and culture-related businesses and organizations within a defined Arts and Cultural District within the City, thereby enhancing those businesses and organizations to more effectively promote their common interests. Council further believes that the location of arts and culture-related businesses and organizations within close proximity within the City will encourage the growth of creative industries, as well as complementary businesses, thus increasing the overall economic activity within the

District and other neighboring areas. Therefore, in accordance with § 15.2-1129.1 of the Code of Virginia, an Arts and Cultural District is hereby established in the City of Williamsburg, the purpose of which is to increase awareness and support for arts, culture, and the creative economy in the City of Williamsburg, especially within the area designated as the Williamsburg Arts District as particularly described in Sec. 3.2 below.

Sec. 3.2. District Boundaries and date established.

The boundaries of the Williamsburg Arts and Cultural District are as set forth on the map entitled “Williamsburg Arts District,” dated December 8, 2010, as maintained in the Williamsburg Office of Economic Development, the provisions of which map are incorporated fully herein by reference. The designation of the area as an Arts and Cultural District shall not in any respect override any applicable City Code regulatory requirements including, but not limited to zoning regulations, fire code, nuisance, and building and property maintenance codes.

Sec. 3.3. Definitions.

For the purposes of this Chapter, and unless otherwise indicated to the contrary, the following term(s) shall have the following meaning(s):

Creative Economy Business: A business whose primary economic activities are the generation or utilization of innovation, knowledge and information involving individual creativity, skill and talent which activities have a potential for wealth and job creation through the generation of ideas, products and/or services. Standard categories may include, but are not limited to: advertising, architecture, art and antiques, designing computer games or software, culinary arts, crafts, design, designer fashion, film and video, music, performing arts, publishing, TV and radio.

District Administrator: The City Manager, or another employee of the City of Williamsburg as designated by the City Manager, shall serve as the District Administrator for the Williamsburg Arts District.

Qualified Arts Business shall mean a new business or expanded business, as defined below or not-for-profit organization that carries on at least one of the following business activities in the Arts District and had been classified by the District Administrator as a Qualified Arts Business for the purposes of this Chapter:

- (a) A business for profit or not-for-profit organization that presents live performances of theatre, dance, music, or other imaginative work and/or produces or exhibits physical works created by, or under the direction of one or more artists, which are intended for unique production or limited reproduction. Museums or historic sites, the primary mission of which is

education, history, or historic preservation, shall also qualify as arts and culture organizations.

(b) A creative economy business.

In no case shall an office use such as a bank, real estate office, medical office, attorney's office or any other general office use qualify as a Qualified Arts Business for the purposes of this Chapter. Additionally, in no case shall a restaurant or retail shop that is a franchise or chain with three or more physical locations qualify as a Qualified Arts Business for the purposes of this Chapter.

New Business shall mean a Qualified Arts Business that is not currently located within the City of Williamsburg.

Expanded Business shall mean a Qualified Arts Business that is currently located in the City of Williamsburg and does one of the following:

- Makes a capital investment in the Qualified Arts Business of at least \$10,000. Capital investments are amounts spent to acquire or upgrade productive fixed assets (such as buildings, machinery and equipment, vehicles) to increase the capacity or efficiency of a firm for more than one accounting period. Capital investments do not include funds spent for working capital or day-to-day operation of the business.
- Creates at least one new full-time job at the Qualified Arts Business.

Incentives for an Expanded Business will apply only to the increased amount of business, professional and occupational license taxes ("BPOL") and state sales tax that the expanded business pays after it qualifies as an expanded business, but will apply to all zoning and building fees for the five years after the business qualifies as an expanded business.

When applying for any benefit afforded under this Chapter, the applicant shall have the burden of proving qualification as a Qualified Arts Business.

Sec. 3.4. Administration.

The City Manager or the District Administrator, if one is so designated by the City Manager, shall be responsible for administration of this Chapter and shall determine the procedures for applying for and obtaining the incentives provided herein.

Sec. 3.5. Eligibility requirements.

Economic incentives and regulatory flexibility may be made available on a one-time basis to any new or expanded qualified arts business physically located in the Arts

District that carries on at least one of the activities described in Section 3.3 above and that to the satisfaction of the District Administrator, meets the following criteria:

- The Qualified Arts Business must advance the City's strategic goals identified in the City's most recently adopted Economic Development Strategic Plan and its current Comprehensive Plan.
- The Qualified Arts Business must enter into a written Arts District Agreement that, among other things, is a description of the principal business activities to be carried on in the Arts District; a description of the location of said business within the Arts District and whether such location is owned by the applicant business or organization or leased and if leased, the name of the landlord and the length of the lease term; details regarding the structure of the business (i.e. type of entity and if other than a sole proprietorship, the names and addresses of all principals of the business); a narrative description of the current and past activities of the business or organization, and in the case of an already operating business or organization, information regarding current and past locations of the business or organization; and a five-year business plan including pro-forma. The Agreement shall be subject to review and approval by the City Attorney.
- The Qualified Arts Business must at all times comply with all applicable Federal, State and City laws and regulations.

Sec. 3.6. Compliance.

Failure of a Qualified Arts Business to pay taxes when due or to comply with the requirements of this chapter shall result in loss of qualification as follows:

- (a) The Qualified Arts Business has entered into an Agreement as provided in Section 3.5 above and fails to pay in full any tax imposed by the City by the due date, shall lose its qualification for the year of such tax and its entitlement to any incentives afforded under this Chapter during such period.
- (b) A Qualified Arts Business receiving incentives under this Chapter that fails to at all times comply with all applicable Federal, State and City laws and regulations or that fails to comply with the terms of the Agreement entered into as provided in Section 3.5 above shall in the case of a first offense lose its Qualified Arts Business qualification for the remainder of the current fiscal year and in the case of any subsequent failure shall lose its Qualified Arts Business qualification for the duration of the total remaining incentive term.

- (c) A Qualified Arts Business that loses its qualification under Section 3.6 (a) or (b), shall be liable to reimburse the City the full amount of all monies that it has received as incentives under this Chapter during the calendar year of the period of non-compliance; such reimbursement to be paid to the City in full within thirty days of the loss of qualification.

Sec. 3.7. Available incentives.

Upon approval by the District Administrator and having entered into an Agreement as provided in Section 3.5 above, a Qualified Arts Business shall be entitled to the incentives provided in Sections 3.8 through 3.11 below. If a business or organization ceases to be a Qualified Arts Business during a year in which rebates, payments or exemptions apply, they shall be prorated for the months the business was a Qualified Arts Business. The Qualified Arts Business shall establish its qualification for the incentives on an annual basis.

Sec. 3.8. BPOL tax rebate.

A Qualified Arts Business upon entering into an Agreement as provided in Section 3.5 above, shall be entitled to a rebate of business, professional and occupational license taxes (“BPOL”) imposed by Chapter 18, Article X of the City Code over a period of five calendar years as follows:

- (a) Year one (1) is the first full calendar year in which a business operates as a Qualified Arts Business. However, if in its first calendar year of doing business in the Arts District, a business operates as a qualified business for a period of less than six (6) months, such qualified business may elect to designate the following calendar year as year one (1) for purposes of obtaining the BPOL tax rebate. The rebate shall apply for a period of five (5) calendar years or until such time that the business no longer meets the definition of a Qualified Arts Business, whichever is the first to occur. If a business ceases to be a Qualified Arts Business or removes its operation from the District during a year in which the rebate applies, the business shall not be qualified or receive the rebate for that year.
- (b) A Qualified Arts Business must establish its qualification for the incentives on an annual basis and the percentage of rebate for each year shall be one hundred (100) percent rebate in year one (1); eighty (80) percent rebate in year two (2); sixty (60) percent rebate in year three (3); forty (40) percent rebate in year four (4) and twenty (20) percent rebate in year five (5).

To qualify for a business license tax rebate under this Chapter, during the first twelve (12) months of operation within the Arts District, a Qualified Arts Business must apply to the Arts District Administrator, who will determine if the business is a Qualified

Arts Business. The Qualified Arts Business shall have the burden of demonstrating, to the satisfaction of the Administrator, that it meets the definition of a Qualified Arts Business and that it meets all applicable criteria for a business license tax rebate. The Qualified Arts Business shall also file an annual business license application with the Commissioner of the Revenue and shall provide the Finance Director with certification from the Administrator that the business is a Qualified Arts Business. The Qualified Arts Business shall also provide the Director with proof that no local taxes or fees are outstanding at the time of application for the business license tax rebate.

If more than one-half ($\frac{1}{2}$) of the gross receipts of a Qualified Arts Business are derived from a licensable activity that qualifies the business, the business license tax assessed on all gross receipts of such licensable activity shall be subject to the graduated rebates described above. If one-half ($\frac{1}{2}$) or less of the gross receipts of a particular licensable activity of a Qualified Arts Business is derived from qualifying operations, the graduated rebates shall be applied only to the amount of tax attributable to the gross receipts earned from the qualifying business activity. The determinations required by this subsection shall be performed by the Finance Director, and the Qualified Arts Business must submit business and financial records sufficient for the Finance Director to make said determination, within a reasonable time and upon the request of the District Administrator.

All business license tax rebates are subject to adjustment by the Commissioner of the Revenue based on actual gross receipts earned from qualifying arts business activities. Any additional business license tax assessed due to such adjustments, or due to revocation of the tax rebate, shall be subject to collection and delinquency provisions set out in Chapter 18 of the City Code.

Sec. 3.9 Sales tax benefit.

During its first five calendar years of operation in the Arts District, a Qualified Arts Businesses shall be entitled to an annual payment equal to all or a portion of the one percent of sales tax attributed to the operations of that particular Qualified Arts Business from its location in the Arts District that is returned to the City by the State for up to five consecutive calendar years. Year one (1) is the first full calendar year in which a Qualified Arts Business operates in the Arts District. However, if a business operates as a Qualified Arts Business for a period of less than six (6) months of the first calendar year, such qualified business may elect to designate the following calendar year as year one (1) for purposes of obtaining the sales tax payment.

To qualify for the sales tax incentive under this Chapter, during the first twelve (12) months of operation within the Arts District, a Qualified Arts Business must apply to the Arts District Administrator, who will determine if the business is a Qualified Arts Business. The Qualified Arts Business shall have the burden of demonstrating, to the

satisfaction of the Administrator, that it meets the definition of a Qualified Arts Business and that it meets all applicable criteria for the sale tax incentive. Such Qualified Arts Business must establish its qualification for the incentives on an annual basis and the percentage of sales tax incentive received by it hereunder during each calendar year shall be as follows: one hundred (100) percent in year one (1); eighty (80) percent in year two (2); sixty (60) percent in year three (3); forty (40) percent in year four (4) and twenty (20) percent in year five (5).

Sec. 3.10 Zoning and building fee exemption.

For a period of sixty (60) months from qualifying as a Qualified Arts Business entering into the Agreement required by Section 3.5 above and for so long as such qualification continues during such period, such business or organization shall be exempt from fees that would otherwise be imposed on such Qualified Arts Business under Chapters 5 (buildings and building regulations) and 21 (zoning) of the Williamsburg Code arising out of the establishment or expansion of its business facility within the Arts District. The exemption only applies to the owners of the Qualifying Arts Business and not to the fee simple or any other beneficial owner of the real property at which the business is located if the property is leased from a third party who is not the owner or a principal of the Qualified Arts Business. To qualify for a fee exemption under this Chapter, a Qualified Arts Business must apply to the Arts District Administrator, who will determine if the business is a Qualified Arts Business. The Qualified Arts Business shall have the burden of demonstrating, to the satisfaction of the Administrator, that it meets the definition of a Qualified Arts Business and that it meets all applicable criteria for the fee exemption.

Enacted this 10th day of February 2011.

Clyde A. Haulman, Mayor

Donna Scott, City Council Clerk