

ORDINANCE #2016-01-003

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON ADOPTING AN EXEMPTION FROM ADMISSION TAX FOR QUALIFYING LIVE MUSIC VENUES; AMENDING BELLINGHAM MUNICIPAL CODE 4.74.030

WHEREAS, Chapter 4.74 of the Bellingham Municipal Code imposes an admission tax, equal to five percent (5%) of the cost of admission, upon persons who pay an admission charge for entrance to an event or establishment and imposes the burden of tax collection and remittance on the person who collects the admission charge, typically the venue owner, operator, or promoter; and

WHEREAS, the City of Bellingham recognizes that live music venues add to the culture, vibrancy, and economic vitality of the City; and

WHEREAS, in 2010, City Council established a downtown entertainment district and Fairhaven entertainment district, through Ordinance No. 2010-12-070, to promote and encourage live music venues in these districts by establishing factors to be considered in determining whether sounds emanating from such venues unreasonably disturb the peace and repose of others; and

WHEREAS, City Council desires to further promote, encourage and incentivize investors to open and operate live music venues in Bellingham's entertainment districts by adopting an admissions tax exemption for qualifying live music venues.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN THAT:

Section 1. BMC 4.74.030 is amended to add a new subsection D as follows:

4.74.030 Exemptions.

Admission tax shall not apply to any person paying an admission charge to:

A.-C. [UNCHANGED]

D. Any live music performance at a premises or location which possesses and maintains a certificate of exemption for a live music venue issued by the director; provided, however, that the admission tax shall be due for any and all admission charges paid prior to the issuance of a certificate of exemption, or paid after the director has cancelled a certificate of exemption, or paid at any time during which a cancellation of a certificate of exemption could or should have been in effect. The term "director," as used in this subsection, means the finance director of the City of Bellingham.

1. A premises or location is eligible for a certificate of exemption if:

- a. The premises or location is located within Bellingham's downtown entertainment district or Fairhaven entertainment district established in BMC 10.24.120, as presently constituted or hereinafter amended or recodified; and
- b. The premises or location has a certificate of occupancy of fewer than six hundred (600) persons; and
- c. The person conducting or operating the premises or location, or any other person authorized by such person, hosts or presents paid live music on at least three (3) separate days per calendar week at the premises or location, on average per quarter. For purposes of this subsection, "paid live music" is defined as an active performance of music by an individual or individuals who are paid for the performance and who, at the time of and during the performance, create live music other than, or in addition to, any pre-recorded music, for an audience through the use or manipulation of voice, instruments, or electronic or computerized equipment; and
- d. The premises or location is current with all license and tax requirements.

2. A premises or location that has obtained more than three (3) violations of law concerning public health, public safety, noise, licensing, taxing or permitting related to the ownership, possession, occupation, operation, use or maintenance of the premises or location in any twelve (12) month period shall be ineligible for a certificate of exemption for a period of one year from the date of the last violation. For purposes of this subsection, a premises or location has obtained a violation if there is a legally binding final decision, order, citation, or other finding of violation entered by any court, adjudicative body or government agency against any legal owner, operator, manager, or employee of the premises or location, or any other person hosting or presenting live music at the premises or location.

3. Any person conducting or operating a premises or location seeking a certificate of exemption under this subsection, who has not previously been issued a certificate of exemption for the same premises or location, shall present to the director a copy of the certificate of occupancy for the premises, and shall submit a completed application for the certificate of exemption on forms and in a manner prescribed by the director. The application shall contain a certification that the conditions set forth in subpart 1 of this subsection will be satisfied during the period that the certificate of exemption is to be in effect, and a separate certification that the premises or location is not ineligible under subpart 2 of this subsection. The director shall issue a certificate of exemption for the premises, unless the director finds that the eligibility requirements of subparts 1 and 2 of this subsection are not met. A certificate of exemption is non-transferable, shall be valid only with respect to the original applicant, and shall apply only to the premises or location that is the subject of the application.

4. On a quarterly basis, each person to whom a certificate of exemption has been issued shall report, on forms prescribed by the director, information sufficient to verify that during the corresponding quarter, the premises or location was in compliance with the requirements of

this subsection, including, but not limited to, the requirements in subparts 1 and 2 of this subsection, and that the premises or location can continue to meet the requirements. The director shall establish by rule the information required. The report shall be due in accordance with the provisions pertaining to the quarterly due dates for remittance of tax under BMC Chapter 4.74.

5. Each person to whom a certificate of exemption has been issued shall immediately notify the director if a premises or location for which a certificate of exemption has been issued fails to be eligible under subparts 1 or 2 of this subsection, or fails to be in compliance with any requirement contained in this subsection or any rule or regulation of the director implementing it.

6. The director shall cancel the certificate of exemption of a location or premises upon a determination by the director:

- a. That a person secured the certificate of exemption by making a false representation in the application for the certificate; or
- b. That the premises or location is ineligible for a certificate of exemption under subparts 1 or 2 of this subsection; or
- c. That the premises or location is not in compliance with any requirement contained in this subsection or any rule or regulation of the director implementing it; or
- d. That, during any quarterly period, the premises or location fails to host or present live music on at least eighty percent (80%) of the number of days that the premises is required to present live music under subpart 1 of this subsection during that quarterly period; or
- e. That the person to whom the certificate of exemption has been issued no longer conducts or operates the premises or location that is the subject of the exemption.

7. A person whose certificate of exemption has been cancelled may re-apply for a certificate for the same premises or location, but no re-application shall be approved unless the person shows that the premises or location is eligible under the requirements of this subsection and all rules and regulations of the director implementing it at the time of the re-application, and further, that the location or premises has been in compliance with subparts 1 and 2 of this subsection during the 30 day period prior to the re-application. Any person wishing to re-apply shall submit the material required in subpart 3 of this subsection, which material shall be current as of the date of the re-application, and, in addition, shall submit all information required by the director as established by rule.

8. The director shall not issue a certificate of exemption to any person who is found by the director to have made a false representation on any application or re-application made under this subsection.

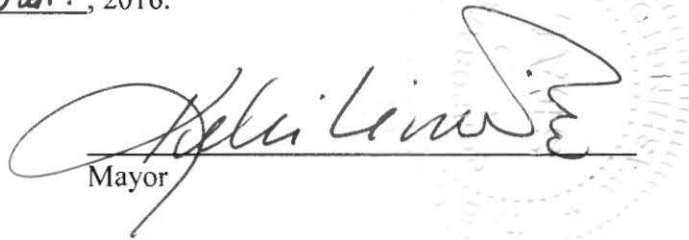
9. Any person to whom a certificate of exemption has been issued shall promptly notify the director of any change of address. If the director has cancelled a certificate of exemption, the director shall provide notice of the cancellation to the person to whom the certificate of exemption was issued by mailing such notice in writing to the address of the person as last reported to the director.

10. Any person whose certificate of exemption has been cancelled may contest the cancellation by filing a written request for hearing with the Bellingham hearing examiner within ten (10) days after the mailing of the notice of cancellation. If the person whose certificate of exemption has been cancelled files a written request for hearing within the prescribed period, the hearing examiner shall schedule and conduct a hearing in accordance with the applicable hearing examiner rules.


PASSED by City Council this 11th day of January, 2016.


Council President

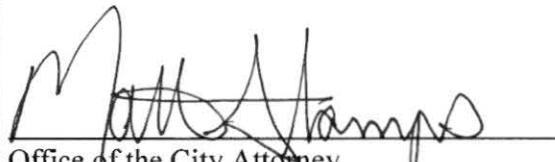
APPROVED by me this 19th day of Jan., 2016.


Mayor

ATTEST:


Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

Published:

January 15, 2016
