

**Proposed Substitute to Item 16-5102
(Finance Committee 10-26-16)**

PROPOSED ORDINANCE AMENDMENT

Sponsored by: JOHN A. FRITCHEY, TONI PRECKWINKLE (President), and SEAN M. MORRISON, Cook County Board of Commissioners

AN AMENDMENT TO THE COOK COUNTY AMUSEMENT TAX

WHEREAS, it is the intent of the County Board to recognize and encourage both the artists who add to our cultural identity as well as the venues that allow them to display their talents to crowds from around the County and around the world by exempting them from the City and County's amusement tax for live performances; and

WHEREAS, it is not the role of government to restrictively decide and define what is and is not 'music'; and

WHEREAS, to single out one or any type of music genre performed at these types of venues as not applicable to the small venue exemption clause is not in the spirit or purpose of the exemption clause nor the expansive definition of music;

WHEREAS, as the recording industry and music genres have evolved, the National Academy of Recording Arts and Sciences has recognized, although sometimes more slowly than society at large, that new music genres evolve and form, such as Rock, Rap, Reggae, Metal, Roots, Electronica, New Age etc.; and

WHEREAS, DJ's have been considered an art form for many years now and in fact the National Academy of Recording Arts and Sciences' Grammy Awards created the Grammy Award for Remixer of the Year, Non-Classical at the 40th Grammy Awards in 1998 to recognize an individual(s) who takes previously recorded material and adds or alters it in such a way as to create a new and unique performance; and

WHEREAS, the first Grammy Award for such category was presented to Chicago's very own Frankie Knuckles whose key role in developing and popularizing House music into an internationally recognized musical genre during the 1980s led to him being referred to as the "The Godfather of House Music."; and

WHEREAS, in 1998, the Cook County Board created an exemption to the Amusement Tax for small venues with a maximum capacity of not more than 750 persons, and in 1999 the County Board further amended said ordinance by defining live performances by examples giving several genre examples and art forms including live musical performances, but does not restrict it to only those examples by including the encompassing term "music"; and

WHEREAS, the current language contained in the County Code has created unintended and unnecessary confusion as to what constitutes 'music' and has created undue burdens on venue

operators who are being required to comply with inconsistent definitions, restrictions and exemptions by the County and the City of Chicago;

NOW, THEREFORE, BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 74 Taxation, Article X, Amusement Tax, Sections 74-391 and 74-392 of the Cook County Code of Ordinances are hereby amended as follows:

Sec. 74-391. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Amusement means any exhibition, performance, presentation or show for entertainment purposes, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition, such as boxing, wrestling, skating, dancing, swimming, riding on animals or vehicles, baseball, basketball, softball, soccer, football, tennis, golf, hockey, track and field games, bowling, or billiard and pool games. For purposes of this article, the term "amusement" shall not mean any recreational activity offered for public participation or on a membership or other basis, including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, golf, racquetball, swimming, weightlifting, body building or similar activities. For purposes of this article, the term "amusement" shall not mean raffles, as defined in 230 ILCS 15/1 (Raffles Act—definitions), intertrack wagering facilities, as defined in the Illinois Horse Racing Act of 1975 (230 ILCS 5/1 et seq.), or automatic amusement devices.

Automatic amusement devices means any machine which upon the insertion of a coin, slug, token, or similar object may be operated generally by any person for use as a game, entertainment or amusement, whether or not registering a score, and includes, but is not limited to, such devices as jukeboxes, marble machines, pinball machines, video games, movie or video booths or stands and all games, operations or transactions similar thereto under whatever name by which they may be indicated.

Charges paid means the gross amount of consideration paid for the privilege to enter, to witness or to view an amusement, valued in money, whether received in money or otherwise, including cash, credits, property and services, determined without any deduction for costs or expenses whatsoever, but not including charges that are added on account of the tax imposed by this article or on account of any other tax imposed on the charge.

Department and Department of Revenue mean the County Department of Revenue.

Live theatrical, live musical or other live cultural performance means a live performance in any of the disciplines which are commonly regarded as part of the ~~fine~~ arts, such as live theater, music, opera, drama, comedy, ballet, modern or traditional dance, and book or poetry readings. The term does not include such amusements as athletic events, races, or performances conducted at adult entertainment cabarets (as defined in Section 14.2.1 of the Cook County Zoning Ordinance).

Maximum capacity means the persons that an auditorium, theater or other space may accommodate as determined by the local fire department or other appropriate governmental agency. If the number of tickets or admissions actually sold to a performance exceeds the legally permissible limit, then, for purposes of determining the applicable tax, the term "maximum capacity" shall mean such greater number.

Operator means any person who sells or resells a ticket or other license to an amusement for consideration or who, directly or indirectly, receives or collects the charges paid for the sale or resale of a ticket or other license to an amusement. The term includes, but is not limited to, persons engaged in the business of selling or reselling tickets or other licenses to amusement, whether on-line, in person or otherwise.

Owner means:

- (1) With respect to the owner of a place where an amusement is being held, any person who has an ownership or leasehold interest in a building, structure, vehicle, boat, area or other place who presents, conducts or operates an amusement in such place or who allows, by agreement or otherwise, another person to present, conduct or operate an amusement in such place;
- (2) With respect to the owner of an amusement, any person which has an ownership or leasehold interest in such amusement or any person who has a proprietary interest in the amusement so as to entitle such person to all or a portion of the proceeds, after payment of reasonable expenses, from the operation, conduct or presentation of such amusement, excluding proceeds from nonamusement services and from sales of tangible personal property.

Patron means a person who acquires the privilege to enter, to witness or to view an amusement.

Person means any natural individual, firm, society, foundation, institution, partnership, limited liability company, association, joint stock company, joint venture, public or private corporation, receiver, executor, trustee or other representative appointed by the order of any court, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular and plural are included in any circumstance.

Resale means the resale of a ticket or other license to an amusement after the ticket or other license has been sold by the owner, manager or operator of the amusement, or by the owner,

manager or operator of the place where the amusement is being held, to an independent and unrelated third party.

Reseller means a person who resells a ticket or other license to an amusement for consideration. The term includes, but is not limited to, ticket brokers and applies whether the ticket is resold by bidding, consignment or otherwise and whether the ticket is resold in person, at a site on the Internet or otherwise.

Ticket means the privilege to enter, to witness or to view an amusement, whether or not expressed in a tangible form.

Sec. 74-392. – Tax imposed.

(a) Except as otherwise provided by this section, an amusement tax is imposed upon the patrons of every amusement which takes place within the County. The rate of the tax shall be equal to three percent of the admission fees or other charges paid for the privilege to enter, to witness or to view such amusement, unless subsection (f) of this section provides for a lower rate.

(b) The tax imposed by subsection (a) of this section may be waived for the following persons or privileges, after approval by the Department of Revenue or, if applicable, the Cook County Board of Commissioners:

- (1) The privilege of witnessing any stock show or business show that is not open to the general public;
- (2) The privilege of witnessing any amateur production or activity such as amateur musicals, plays and athletic events conducted by a not-for-profit organization operated exclusively for charitable, educational or religious purposes;
- (3) Subject to satisfying the requirement contained in subsection (c) of this section, the privilege of witnessing any amusement sponsored or conducted by and the proceeds of which, after payment of reasonable expenses, inure exclusively to the benefit of:
 - a. Religious, educational and charitable institutions, societies or organizations;
 - b. Societies or organizations for the prevention of cruelty to children or animals;
 - c. Societies or organizations conducted and maintained for the purpose of civic improvement;
 - d. Fraternal organizations, legion posts, social and political groups which conduct amusements, sponsored occasionally but not more often than twice yearly;

Provided, however, that the entities described in subsections (b)(3)a-d of this section are not-for-profit institutions, organizations, groups or societies, where no part of the net earnings inure to the benefit of any private shareholder or person;

- e. Organizations or persons in the armed services of the United States, or National Guard organizations, reserve officers' associations, or organizations or posts of war veterans, or auxiliary units or societies of such posts or organizations, if such posts, organizations, units or societies are organized in the State of Illinois, and if no part of their earnings inure to the benefit of any private shareholder or person;
- f. Organizations or associations created and maintained for the purpose of benefiting the members, or dependents or heirs of members, of the police or fire departments of any political subdivision of the State of Illinois;

Provided, however, that the exemptions contained in subsections (b)(3)a-f of this section shall apply only to benefits or other fundraising events and shall not apply to more than two events per calendar year which shall not exceed a total of 14 calendar days;

- g. Societies or organizations conducted for the sole purpose of maintaining symphony orchestras, opera performances or artistic presentations, including, but not limited to, musical presentations ("artistic societies or organizations"), if the artistic society or organization:
 - 1. Receives substantial support from voluntary contributions;
 - 2. Is a not-for-profit institution where no part of the net earnings inure to the benefit of any private shareholder or person; and
 - 3. Either (i) bears all risk of financial loss from its presentation of the amusement, where the amusement takes place at a venue that is owned or operated by a not-for-profit institution, no part of whose net earnings inure to the benefit of any private shareholder or person, and where the amusement is limited to an engagement of not more than four calendar days over the course of a calendar year, or (ii) is substantially and materially involved in the production and performance of the amusement.

Where an amusement is sponsored or conducted by two or more artistic societies or organizations, the requirements of subsections (b)(3)g.1. and 2. of this section must be met by each of such artistic societies or organizations, but the requirements of subsection (b)(3)g.3. may be met by any of such artistic societies or organizations, individually or in combination.

(c) None of the exemptions contained in subsection (b)(3) of this section shall be granted unless a written application for exemption is filed with the Department at least 45 calendar days prior to the amusement event or 15 calendar days prior to the date that admission tickets to the amusement are first made available for sale, whichever is earlier. The application shall be on a form prescribed by the Director of Revenue and shall contain all information necessary to permit the Department to determine whether the exemption claimed by the applicant is applicable. If the department determines that by granting the exemption the potential loss of tax revenue will be greater than \$150,000.00 the application shall be submitted to the Cook County Board of Commissioners for final approval. The County Board may deny the exemption application if it finds that the exemption is not in the best economic interest of the County.

(d) The tax imposed in subsection (a) of this section shall not apply to or be imposed upon:

- (1) The admission fees to witness in person, live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the County, whose maximum capacity, including all balconies and other sections, is not more than 750 persons.
- (2) Initiation fees and membership dues paid to a health club, racquetball club, tennis club or a similar club or organization, when such club or organization is organized and operated on a membership basis and for the recreational purposes of its members and its members' guests, shall be exempt from the tax imposed in subsection (a) of this section. This exemption shall not be construed to apply to any fees paid or based upon a per-event or a per-admission basis.
- (3) Fees or other charges paid by a patron for the privilege of witnessing, viewing or participating in an amusement, solely within the confines of such patron's home, shall be exempt from the imposition of the tax imposed in subsection (a) of this section. For purposes of this exemption, the term "home" means the permanent dwelling residence of the patron. For patrons who live in condominium buildings, apartment buildings or other multiple-unit structures, the individual dwelling unit the patron occupies shall be considered the patron's home.

(e) For the purpose of determining the amount of the amusement tax due under this article, admission fees or other charges shall be computed exclusive of:

- (1) Any Federal, State or municipal taxes imposed upon the amusement patron.
- (2) Any amounts subject to other Cook County taxes (with the exception of County Retailers' Occupation Tax), provided such County taxes are separately listed on the ticket of admission and the corresponding Cook County tax has been paid on that separately stated amount.
- (3) Any separately stated optional charges for nonamusement services or for sales of tangible personal property.

(f) It is unlawful for any person to produce, present or conduct any amusement without collection of the tax, except as provided in this article.

- (1) The rate of the tax imposed in subsection (a) of this section shall be one percent of the admission fees or other charges to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the County whose maximum capacity, including all balconies and other sections, is more than 750 persons and less than 5,000 persons.
- (2) The rate of the tax imposed in subsection (a) of this section shall be 1.5 percent of the admission fees or other charges to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the County whose maximum capacity, including all balconies and other sections, is 5,000 persons or more.

(g) For purposes of subsections (d)(1) and (f) of this section, amusements utilizing the services of a disc jockey (DJ) may constitute a “live cultural performance.”

(1) In order for the activities of a DJ to be considered a “live cultural performance,” both of the following conditions must be met:

- a. The activities must substantially add to or otherwise modify the pre-recorded material used by the DJ, in the form of a significant degree of technical or manual manipulation; and
- b. There must be a written contract for the DJ’s appearance between the venue, owner, manager or operator of the amusement and the DJ.

(2) In addition to the requirements in subsection (g)(1) above, the DJ performance must meet 5 of the following 6 factors:

- a. The DJ uses a combination of audio equipment including but not limited to turntables, laptops, synthesizers, keyboards, and visual effects equipment including but not limited to lighting and video effects, etc.
- b. The DJ is featured in advertisements for the venue.
- c. The DJ is visible to patrons of the venue, who spend a substantial amount of time observing the DJ’s performance.
- d. The DJ’s performance is featured more prominently than other amusements or activities available at the venue.
- e. The DJ appears for a limited engagement for a period of time not to exceed 8 performances in a calendar month.

f. The DJ is represented by a manager and/or agent.

(3) The burden is on the owner, manager or operator of an amusement to establish, through the use of books, records or other documentary evidence, that each event is a “live cultural performance.” Such evidence must be made available to the Department upon request.

(gh) It shall be presumed that all amusements are subject to tax under this article until the contrary is established by books, records or other documentary evidence.

(hi) It is unlawful for any person to produce, present, conduct, or resell tickets to, any amusement without collection of the tax, except as provided in this article.

Effective Date: This ordinance amendment shall take effect immediately upon adoption.