

2017
SHORT ANSWERS TO
COMMON QUESTIONS

TEXAS ASSOCIATION OF COUNTIES

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MASS GATHERINGS

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The  symbol indicates sections that have been updated since the previous publication.

Introduction

Throughout the year, many groups organize festivals, concerts, and other public events to be held in unincorporated areas of the county. Below are answers to a few questions on the different types of events that qualify as mass gatherings, the applicable regulations and issues arising from mass gatherings, including a county's authority to require an event promoter to obtain a permit, hold required hearings, charge fees, and impose penalties.

TYPES OF MASS GATHERINGS

1. What is a mass gathering?

Generally, under §751.002 of the Health and Safety Code (Code), a mass gathering is a gathering held outside the limits of a municipality that attracts or is expected to attract: (1) more than 2,500 persons; or (2) more than 500 persons if 51% or more of those persons may be under 21 years of age and the selling or consumption of alcoholic beverages is planned or may reasonably be expected to occur. To come within the definition, the gathering must be one at which the attendees will remain for more than five continuous hours or for any amount of time during the period between 10 p.m. and 4 a.m. Under Code §751.0021, horse or greyhound racing that is not held at a location where pari-mutuel wagering is authorized under the Texas Racing Act that attracts or is expected to attract at least 100 persons is also subject to the Texas Mass Gathering Act. Health and Safety Code Chap. 751. The **county judge**

makes the determination on whether to issue a permit for a mass gathering under Code Chapter 751.

See the section on Permits for Mass Gatherings for more information.

2. What is a beach mass gathering?

Natural Resources Code §61.252 authorizes the **commissioners court** of a county bordering the Gulf of Mexico or its tidewater limits¹ to regulate mass gatherings on beaches in the county's unincorporated areas. For these purposes, a mass gathering is defined as a gathering that attracts or expects to attract more than 200 individuals who will remain at the beach location for more than two consecutive hours.

If the **commissioners court** requires a permit, it must adopt local procedures governing the permit application process. The **commissioners court** may require the permit holder to take reasonable specified actions to protect public health, safety, and welfare. The county may seek injunctive relief to prevent a violation or threatened violation of its order. Nat. Res. Code §61.253. A violation of an order adopted by the **commissioners court** is a Class B misdemeanor. Nat. Res. Code §61.254.

3. What is an outdoor music festival?

An outdoor music festival is defined under Occupations Code §2104.001 as a live music event taking place on two or more consecutive days or any two days during a three-day period if: (1) more than 5,000 people attend any performance; (2) either the performer or audience is not within a permanent structure; and (3) the performance takes place outside the boundaries of a municipality. The **commissioners court** makes the determination on whether to issue a permit for an outdoor music festival under Occupations Code Chapter 2104.

See the section on Outdoor Music Festival for more information.

¹ Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, and Willacy counties.

PERMITS FOR MASS GATHERINGS

1. How is the mass gathering permit process initiated?

Code §751.004(a) requires the event promoter to apply for a permit from the **county judge** no later than the 45th day before the date the event is scheduled to take place. The elements required by the application are set out in Code §751.004(b), and include adequate protection for traffic control and public health and safety.

2. For a mass gathering, how does the promoter or the county make a determination that 51 percent or more of the persons attending the event may reasonably be expected to be younger than 21 and it is planned or expected that alcohol will be sold, served, or consumed?

There is no formula, but the key word is “reasonable.”

For example, an Australian children’s group is coming to the county to hold an afternoon concert and expects a crowd between 1,000 and 2,000 to attend. While it is reasonable to assume that more than 51% of the attendees will be less than 21 years of age, it is also unlikely that alcohol will be served or consumed at the event. This event would not fit within the definition of a mass gathering. Note that the music concert does not fall under the definition of an outdoor music festival because it takes place on a single day and fewer than 5,000 attendees are expected.

On the other hand, if the event was instead for an Australian rock band with the same anticipated attendance numbers, it would be reasonable to expect that 51% of the attendees would be under 21 and also that alcohol would be present and consumed. This event would be considered a mass gathering requiring a county permit. Again, it would not be considered an outdoor music festival.

3. May the county judge delegate authority to issue a permit?

Yes. The **county judge** may file a written order with the **commissioners court** designating a county officer to exercise his or her authority to hear applications for mass gathering permits under Code Chapter 751. The judge may revoke the delegation at any time, either in general or in relation to a particular permit application.

For example, the **county judge** in a particular county has long transferred the authority to hear mass gathering permits to the sheriff. However, the county has just

received a petition to hold a racing event that will attract hundreds of thousands of attendees, a gathering by an order of magnitude larger than any the county has ever held before. The **county judge** may decide to make the determination on this particular event and withdraw the delegation from the sheriff for the one specific permit application.

4. Once the county judge receives the application, what is the process the county must follow before the hearing?

After receiving the application, the **county judge** must send a copy to the county health authority, the sheriff, and the county fire marshal (or person designated by the **commissioners court** if there is no county fire marshal). Each of these three authorities must review the preparations for the mass gathering and submit reports to the **county judge** stating whether he or she believes the minimum standards of health and sanitation, public safety and order, or fire safety and order, respectively, will be maintained for the mass gathering. The health and sanitation minimum standards are set by administrative rule by the Department of State Health Services and available at 25 Tex. Admin. Code Ann. §265.3. The public safety minimum standards are set by administrative rule by the Department of Public Safety and available at 37 Tex. Admin Code Ann. §1.161. The reports must be received by the **county judge** at least five days before the hearing is scheduled to be held.

5. When must the hearing be held?

Under Code §751.006, the hearing must be held not later than 10 days before the scheduled date of the mass gathering. The **county judge** sets the date and time of the hearing and provides notice to the promoter and each person with an interest in whether or not the permit should be granted. The Code does not provide guidance on how to determine when a person has an “interest.” The county health authority, sheriff, and county fire marshal (or designee) must be present at the hearing to give testimony relating to their reports. At the hearing, any person may appear and testify for or against granting the permit.

6. Under what circumstances may the county judge reject a permit?

Under Code §751.007(b), the **county judge** may deny the permit if the judge finds the application is inadequate or contains false information, the promoter's financial backing is insufficient, the location selected for the mass gathering is inadequate, the preparations to limit the number of persons attending the mass gathering or to provide adequate supervision for minors attending the mass gathering are

inadequate, the promoter does not have assurance that the scheduled performers will appear, the promoter cannot ensure minimum standards of sanitation and health, the preparations do not ensure the mass gathering will be conducted in an orderly manner and that the physical safety of persons attending will be protected, adequate arrangements for traffic control have not been provided, or if adequate medical and nursing care will not be available.

7. May the county judge's decision be appealed?

Yes. The promoter or a person affected by granting or denying the application may appeal the decision to a district court having jurisdiction in the county in which the mass gathering will be held. Health & Safety Code §751.009.

8. May the county judge revoke a permit after it has been granted?

Yes. Under §751.008, the **county judge** may revoke the permit if he or she determines preparations for the event will not be complete by the scheduled date or the permit was obtained through fraud or misrepresentation. The county must provide at least 24 hours' notice before the revocation to the promoter. At the promoter's request, the **county judge** must hold a hearing on the revocation. The permit revocation may be appealed to district court by the promoter or a person affected by the revocation.

9. Does the county have any authority over the mass gathering once it has begun?

Yes. Under Code §751.012, the county health authority, sheriff, and county fire marshal (or the person granted the marshal's authority) may inspect the mass gathering during the gathering to ensure the minimum health and safety and public safety standards are being maintained. If it is determined that a violation of the standards is occurring, the health authority, the sheriff, or the fire marshal (or designee) may order the promoter to correct the violation. Failure to comply with an order issued by one of these authorities is a Class C misdemeanor.

10. May the county charge permit or inspection fees for a mass gathering?

There is no provision in Code Chapter 751 for the county to charge a general permit fee. However, the **commissioners court** may establish and collect fees necessary to defray inspection costs incurred by the county health authority, the sheriff or the county fire marshal (or designee) for inspections conducted during the mass gathering. The fees are deposited into the county's general fund. The **commissioners**

court may use the collected inspection fees to reimburse the county department or state agency (if a state agency was used to perform an inspection) for the actual cost of performing the inspection. Health & Safety Code §751.013.

11. Is there a penalty for a promoter's failure to acquire a permit for a mass gathering?

Yes. Under Code §751.011 a person who holds a mass gathering without a permit commits a misdemeanor punishable by a fine not to exceed \$1,000, confinement in the county jail for not more than 90 days, or both a fine and confinement.

12. May a county judge issue a single mass gathering permit for multiple events?

No. The attorney general has opined that Code Chapter 751 does not authorize the **county judge** to issue a single permit to cover more than one event. Tex. Att'y Gen. Op. GA-0582 (2007).

OUTDOOR MUSIC FESTIVALS

1. How is the outdoor music festival permit process initiated?

Occupations Code §2104.051 requires a promoter of an outdoor music festival to register with the county clerk of the county in which the festival will be held. The registration must be verified by the promoter, be accompanied by a \$5 registration fee, and include the promoter's name and address, a list of associates and employees, and a statement indicating whether the promoter, associates or employees have been convicted of crimes involving misappropriation of funds, theft, robbery or burglary.

Before the 60th day before the date of the outdoor music festival, the promoter must also file an application with the county clerk of the county in which the festival is to be held. The application must be verified by the promoter and accompanied by a \$5 filing fee. The application must contain the information provided on the promoter's registration and also include information about the maximum number of persons the promoter will allow to attend the festival, crowd control plans, health and safety preparations, and the agreements between the promoter and the scheduled performers.

2. Once the county clerk receives the application, what is required?

The county clerk must forward a copy of the application to the county health department or county health authority, as appropriate, who must make a written report to the **commissioners court** indicating whether the preparations described in the application would be sufficient to protect the community and attendees and avoid a violation of Health and Safety Code Chapter 341 (Minimum Standards of Sanitation and Health Protection Measures). The report must be filed before the second day before the date of the hearing on the permit application. The county health authority (or a representative of the county health department) must be present at the hearing on the permit application to testify if asked.

The **commissioners court** must hold the hearing at least 15 days after the application was filed and before the 30th day before the first scheduled performance at the festival. The **commissioners court** must give the promoter at least 10 days notice of the hearing. Occupations Code §2104.103(d) provides that any person may appear at the hearing and testify for or against the grant of the permit.

3. Under what circumstances may the commissioners court deny a permit application?

Under Occupations Code §2104.104, the **commissioners court** shall grant the permit unless, by majority vote, the court determines by a preponderance of the evidence presented at the hearing that: (1) the application was insufficient or contained false or misleading information; (2) required information is omitted from the application; (3) the promoter does not have sufficient financial backing or stability to carry out the preparations described or ensure the performance of the agreements; (4) the preparations are insufficient to protect the community or avoid violations of the sanitation and health provisions of the Health and Safety Code; (5) the times and location of the festival create a substantial danger of congestion and disruption of other activities in the immediate vicinity; (6) the preparations are insufficient to limit the number of attendees to the maximum number stated in the application; or (7) the promoter does not have adequate agreements with performers to ensure with reasonable certainty that advertised performers will appear.

4. May the commissioners court revoke the permit after it has been granted?

Yes. The **commissioners court** may revoke the permit at any time before the fifth day before the date of the first performance, if the court gives reasonable notice to the promoter and holds a hearing. The **commissioners court** must find that the

preparations for the event will not be completed in time for the first performance and the failure to complete the preparations would result in a threat to the health of the community or persons attending the festival to support revocation of a permit. A permit may not be revoked during the period beginning on the fifth day before the first performance of the festival and ending on the final day of the festival.

5. May the commissioners court's decision be appealed?

Yes. A person affected by the grant, denial, or revocation of an outdoor music festival application or permit may appeal the **commissioners court's** action in state district court in the county in which the **commissioners court** presides. An appeal does not suspend the **commissioners court's** action unless the district court orders a suspension.

6. Other than the registration fee and the application filing fee, can the county charge any additional fees?

No. There is no provision in Occupations Code Chapter 2104 for the county to charge additional fees related to the outdoor music festival.

7. Is there a penalty for a promoter's failure to acquire a permit for an outdoor music festival?

Yes. A person may not act as a promoter of an outdoor music festival unless the person registers with the county clerk nor direct or control a festival without a permit. Under Occupations Code §2104.151, each of these prohibited acts is a misdemeanor punishable by a fine not to exceed \$1,000, confinement in the county jail for a term not to exceed 30 days, or both a fine and confinement.

8. Does the county have any authority over an outdoor music festival once it has begun?

Although the Occupations Code does not specifically address the county's authority while an outdoor music festival is in progress, the county is not prohibited from taking necessary action under its general authority to protect public health and safety.

For example, an outdoor music festival has been going on for two days when the weather unexpectedly changes. Standing water from the rain affects sanitation at the site and there is flash flooding on the grounds and a danger of lightning strikes. In

this situation, the **county judge** would be able to intervene and halt the festival under the county judge's authority to declare a local disaster under Government Code §418.108.