

2017
SHORT ANSWERS TO
COMMON QUESTIONS

TEXAS ASSOCIATION OF COUNTIES

1210 San Antonio Street Austin, Texas 78701

Honorable Joyce Hudman
Brazoria County Clerk & Association President

Gene Terry
Executive Director

Rex Hall
Assistant Executive Director

PREPARED BY ASSOCIATION LEGAL DEPARTMENT

Stan Reid
General Counsel

Jenny Gilchrist
Associate General Counsel

Katherine Howard
Associate General Counsel

Paul Miles
Associate General Counsel

Michael Pichinson
Associate General Counsel

Jamie Chandler
Paralegal

Kristi Shepperson
Paralegal



LEGAL RESEARCH

Legal Helpline: (888) 275-8224 • Toll Free: (800) 456-5974
or visit our website at www.county.org



THIS PUBLICATION IS A RESEARCH TOOL AND NOT THE COUNSEL OF AN ATTORNEY. THIS PUBLICATION IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. It is provided without warranty of any kind and, as with any research tool, should be double checked against relevant statutes, case law, attorney general opinions and advice of legal counsel e.g., your county attorney. Each public officer is responsible for determining duties of the office or position held. Any question regarding such duties should be directed to competent legal counsel for a written opinion.

REGULATION OF SEXUALLY ORIENTED BUSINESSES

THIS PUBLICATION IS A RESEARCH TOOL AND NOT THE COUNSEL OF AN ATTORNEY. THIS PUBLICATION IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. It is provided without warranty of any kind and, as with any research tool, should be double checked against relevant statutes, case law, attorney general opinions and advice of legal counsel e.g., your county attorney. Any question should be directed to competent legal counsel for a written opinion.

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

1. What is a sexually oriented business?

Local Government Code Chapter 243 defines a sexually oriented business as a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video store, adult motel, or other commercial enterprise, which has as its primary business the offering of a service or selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.¹

2. What entities are specifically exempted from regulation under Local Government Code Chapter 243?

The statute exempts two types of businesses from regulation as a sexually oriented business: (a) a bookstore, movie theater, or video store, as distinguished from the adult version of such a business; and (b) a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist or licensed barber performing functions authorized under their license.²

¹ Local Government Code §243.002

² Local Government Code §243.004

3. Does a county have the authority to regulate sexually oriented businesses?

Yes. Chapter 243 of the Local Government Code notes that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety and welfare, and that the purpose of the chapter is to provide local governments a means of remedying this problem.³ The statute specifically provides that Chapter 243 does not diminish the authority of a local government to regulate sexually oriented businesses with regard to any matters.⁴ A court of appeals has stated "... it is apparent that the Legislature intended to provide a broad framework for regulation of certain "sexually oriented businesses" while authorizing municipalities and counties to enact ordinances within that framework."⁵

4. What types of location restrictions are allowed?

A county may restrict a sexually oriented business to a particular area, or prohibit a sexually oriented business from being located within a certain distance of a school, regular place of religious worship, residential neighborhood, or other location the commissioners court finds is inconsistent with the operation of a sexually oriented business. The commissioners court may also restrict the number of sexually oriented businesses that operate in a specified area. The commissioners court must take into account First Amendment and other state and federal constitutional considerations. The specific distances that a county may require sexually oriented businesses to be located from other land uses is a fact-sensitive determination.⁶

5. Does a sexually oriented business have to be licensed?

A county may require the owner or operator of a sexually oriented business to get a license or permit if the county has adopted regulations.⁷ A county may charge a fee for the license or permit. The fee must be based on the cost of processing the applications and investigating the applicant.⁸ The county's adopted regulations may provide for denial, suspension or revocation of the license or permit. An owner

³ Local Government Code §243.001(a)

⁴ Local Government Code §243.001(b)

⁵ State v. Chacon, 273 S.W.3d 375, 379 (Tex. App. 2008)

⁶ Tex. Att'y Gen. Op. No. GA-658 (2008)

⁷ Local Government Code §243.007

⁸ Local Government Code §243.009

or operator can file suit in district court to contest the denial, suspension or revocation of the permit or license.⁹

6. How can the county enforce its regulation of a sexually oriented business?

The county can apply for an injunction in district court to prohibit the violation of a regulation. A person who violates a regulation is also subject to Class A misdemeanor charges.¹⁰ A county can also inspect a sexually oriented business to determine whether the business is complying with Chapter 243 of the Local Government Code and the county regulations.¹¹

7. Is a sexually oriented business required to post a sign?

Yes. A person who intends to operate a sexually oriented business in a county that does not regulate sexually oriented businesses is required to erect an outdoor sign stating that a sexually oriented business is intended to be located on the premises, and giving the name and business address of the operator. The sign must be affixed by the 60th day before the intended date of commencement of operation.¹²

In a county that regulates sexually oriented businesses, an applicant for a license must erect an outdoor sign stating that a sexually oriented business is intended to be located on the premises. The sign must also state the name and business address of the applicant. The sign must be affixed at least 60 days before the date of the application for a license or permit.¹³

In both regulated and unregulated counties, the sign must measure at least 24 inches by 36 inches, with letters at least 2 inches in size. A county may require the sign to be in both English and a language other than English, if it is likely that a substantial number of residents in the area speak a language other than English.¹⁴

8. How old does a person have to be to work at a sexually oriented business?

Pursuant to Labor Code §51.016, a person must be at least 18 years of age to work at a sexually oriented business (this requirement does not apply to an independent

⁹ Local Government Code §243.007

¹⁰ Local Government Code §243.010

¹¹ Local Government Code §243.008

¹² Local Government Code §243.0075(b)

¹³ Local Government Code §243.0075(a)

¹⁴ Local Government Code §243.0075(c)

contractor who performs repair, maintenance or construction services at the sexually oriented business). The sexually oriented business is required to keep paperwork showing proof of age for all employees for at least 2 years after the person leaves employment with the sexually oriented business. The sheriff is authorized to check the paperwork if there is good reason to believe an underage person was hired within the two years preceding the date of the inspection. Failure to maintain a record or intentionally or knowingly hindering an inspection is an offense. An offense under Chapter 51 of the Labor Code is a Class B misdemeanor.¹⁵

9. May a sex offender be affiliated with a sexually oriented business?

No. A sex offender may not own or partly own a sexually oriented business or serve as a director, officer, operator, manager or employee of a sexually oriented business.¹⁶ A sexually oriented business, if it knows a person is a sex offender, may not contract with the person to operate or manage the business or employ the person as an officer, operator, manager or other employee.¹⁷

10. May a sexually oriented business obtain an alcoholic beverage permit?

Yes, under certain circumstances. The Texas Alcoholic Beverage Commission or its administrator must hold a hearing before granting or denying an original application for a mixed beverage permit, private club registration permit, wine and beer retailer's permit or retail dealer's on-premise license if a sexually oriented business is to be operated on the premises to be covered by the license. The commission and the administrator are required to give due consideration to the recommendations of the county judge. The commission and the administrator may also give consideration to a written recommendation by the commissioners court. A hearing must be held on a renewal permit if a petition signed by 50% of the residents who live within 300 feet of the sexually oriented business is presented to the commission.¹⁸

¹⁵ Labor Code §51.031

¹⁶ Business and Commerce Code §102.002

¹⁷ Business and Commerce Code §102.003

¹⁸ Alcoholic Beverage Code § 11.43(c)