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SHORT ANSWERS TO COMMON QUESTIONS

TEXAS ASSOCIATION OF COUNTIES

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TEXAS ASSOCIATION *of* COUNTIES

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MASS GATHERINGS AND OUTDOOR MUSIC FESTIVALS

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

INTRODUCTION

Throughout the year, many groups hold festivals, concerts, and other public events in unincorporated areas of the county. Some of these events require permits as mass gatherings, outdoor music festivals, or both. Find answers below 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, a mass gathering is a gathering held outside the limits of a municipality 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. that attracts or is expected to attract either more than 2,500 persons or 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. Furthermore, under §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.¹ If a mass gathering also meets the definition of an outdoor music festival, both permits are required.

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 limits² 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 continuous 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. According to Natural Resources Code §61.254, the county may seek injunctive relief to prevent a violation or threatened violation of its order. A violation of an order adopted by the commissioners court is a Class B misdemeanor.³

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 outside the boundaries of a municipality on two or more consecutive days or any two days during a three-day period if more than 5,000 people attend any performance and either the performer or audience is not within a permanent structure. The commissioners court makes the determination on whether to issue a permit for an outdoor music festival under Occupations Code Chapter 2104.101. An outdoor music festival may also be a mass gathering. If so, both permits are required.

See the section on Outdoor Music Festivals beginning on page 6 for more information.

¹ Tex. Health and Safety Code Chapter 751

² Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, and Willacy counties

³ Tex. Natural Resources Code §61.254

PERMITS FOR MASS GATHERINGS

1. How is the mass gathering permit process initiated?

Health and Safety Code §751.004(a) provides, “at least 45 days before the date on which a mass gathering will be held, the promoter shall file a permit application with the county judge of the county in which the mass gathering will be held.” The elements required by the application are set out in §751.004(b), and include adequate protection for traffic control and public health and safety.

2. 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 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 Health and Safety 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 Texas Administrative Code §265.3. The public safety minimum standards are set by administrative rule by the Department of Public Safety and available at 37 Texas Administrative Code §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 Health and Safety Code §751.006, the hearing must be held not later than 10 days before the scheduled date of the mass gathering. The county judge or the person to whom the county judge has delegated his authority 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 Health and Safety 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 Health and Safety 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.⁴

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

Yes. Under Health and Safety Code §751.008, the county judge may revoke the permit if a determination is made that 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 Health and Safety 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 the Health and Safety Code for the county to charge a general permit fee. However, the commissioners court may establish and collect fees

⁴ Tex. Health & Safety Code §751.009

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.⁵

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

Yes. Under Health and Safety 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 Health and Safety Code Chapter 751 does not authorize the county judge to issue a single permit to cover more than one event.⁶

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 include information about the maximum number of persons the promoter will allow to attend the festival, crowd control plans, health and safety

⁵ Tex. Health & Safety Code §751.013

⁶ Tex. Att'y Gen. Op. No. GA-0582 (2007)

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 the application was insufficient or contained false or misleading information, required information is omitted from the application, the promoter does not have sufficient financial backing or stability to carry out the preparations described or ensure the performance of the agreements, the preparations are insufficient to protect the community or avoid violations of the sanitation and health provisions of the Health and Safety Code, the times and location of the festival create a substantial danger of congestion and disruption of other activities in the immediate vicinity, the preparations are insufficient to limit the number of attendees to the maximum number stated in the application, or 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 Chapter 2104 of the Occupations Code 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.