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SHORT ANSWERS TO COMMON QUESTIONS

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TEXAS ASSOCIATION *of* COUNTIES

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REGULATION OF SEXUALLY ORIENTED BUSINESSES

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

SEXUALLY ORIENTED BUSINESSES

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 Tex. Local Gov't Code §243.002

² Tex. Local Gov't Code §243.004

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

Yes. Chapter 243 of the Local Government Code expressly provides 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 explained "... 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 Moreover, the Texas Legislature has created a Human Trafficking Prevention Task Force to examine, among other things, the association of human trafficking with the operation of sexually oriented businesses. That task force includes a representative of a sheriff's department.⁶ In response to the legislative charge, the Attorney General issues biennial and annual reports to the Texas Legislature addressing strategic plans and activities (visited on the Internet Oct. 27, 2023).⁷



4. What types of 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.⁸ The commissioners court must take into account First Amendment and other state and federal constitutional considerations. However, while some still dispute a connection between sexually oriented businesses and increased crime in the area of such businesses, acceptance of the connection is generally a well settled legal precedent upon which location restrictions can be based.⁹

³ Tex. Local Gov't Code §243.001(a)

⁴ Tex. Local Gov't Code §243.001(b)

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

⁶ Tex. Gov't Code §402.035(c)(8), as amended by SB 1527, 88th (R.S.) Leg., effective September 1, 2023

⁷ Tex. Att'y Gen. Task Force Publications (<https://www.texasattorneygeneral.gov/human-trafficking-section/texas-human-trafficking-prevention-task-force/task-force-publications>)

⁸ Tex. Local Gov't Code §243.006

⁹ *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Schleuter v. City of Ft. Worth*, 947 S.W.3d 869 (Tex. App.-Ft. Worth 1997)

The specific distances that a county may require sexually oriented businesses to be located from other land uses is a fact-sensitive determination.¹⁰

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.¹¹ 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.¹² The county's adopted regulations may provide for denial, suspension or revocation of the license or permit. An owner or operator can file suit in district court to contest the denial, suspension or revocation of the permit or license.¹³

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.¹⁴ 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.¹⁵

The Attorney General, District or County Attorney, in the name of the state, may bring an action for an injunction or other process against a person who violates or threatens to allow a person younger than 18 years of age to enter the premises of a sexually oriented business.¹⁶

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

¹⁰ Tex. Att'y Gen. Op. No. GA-0658 (2008)

¹¹ Tex. Local Gov't Code §243.007

¹² Tex. Local Gov't Code §243.009

¹³ Tex. Local Gov't Code §243.007

¹⁴ Tex. Local Gov't Code §243.010

¹⁵ Tex. Local Gov't Code §243.008

¹⁶ Tex. Bus. & Com. Code §102.004(a)

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.¹⁷

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.¹⁸

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.¹⁹

Pursuant to Business and Commerce Code §102.101, sexually oriented businesses must post a sign in each restroom on the premises one sign that directs a victim of human trafficking to contact the National Human Trafficking Resource Center. Unless otherwise directed by the Attorney General, the sign must be 11 inches by 17 inches in size and be in both English and Spanish. The sign shall also include the contact information for reporting suspicious activity to the Department of Public Safety.

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 21 years of age to work at a sexually oriented business (this requirement does not apply to an independent contractor who only performs repair, maintenance or construction services at the sexually oriented business). The sexually oriented business is required to register and participate in the E-verify program to verify information of all employees and independent contractors. The sexually oriented business is required to keep paperwork and E-verify program information showing proof of age for all employees for at least five 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 five years preceding the date of the inspection. Failure to maintain a record or intentionally or knowingly hindering an

¹⁷ Tex. Local Gov't Code §243.0075(b)

¹⁸ Tex. Local Gov't Code §243.0075(a)

¹⁹ Tex. Local Gov't Code §243.0075(c)

inspection is an offense. An offense under Chapter 51 of the Labor Code is a Class B misdemeanor.²⁰

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.²¹ 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.²²

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

Yes, under certain circumstances. However, a member of the public may protest an application for an original alcoholic beverage permit if a sexually oriented business is to be operated on the premises to be covered by the permit. Similarly, a member of the public may protest the renewal of a permit if a sexually oriented business is to be operated on the premises to be covered by the permit and a petition is presented to the commission requesting a hearing which is signed by 50% of the residents who reside within 300 feet of any property line of the affected premises.²³

²⁰ Tex. Lab. Code §51.031

²¹ Tex. Bus. & Com. Code §102.002

²² Tex. Bus. & Com. Code §102.003

²³ Tex. Alco. Bev. Code §11.43(c)



SEXUALLY ORIENTED PERFORMANCES

1. What is a sexually oriented performance?

Penal Code §43.28 defines a sexually oriented performance as a visual performance that features a performer who is nude or who engages in sexual conduct and appeals to the interest in sex.²⁴ An offense under this section is a Class A misdemeanor.

2. Does a county have the authority to regulate sexually oriented performances?

Yes. Local Government Code §243.0031 provides the authority for a county to regulate sexually oriented performances to promote public health, safety, or welfare as the county considers necessary. A county may not authorize sexually oriented performances on public property or when in the presence of a person under the age of 18.²⁵

²⁴ Tex. Penal Code §43.28, as added by SB 12, 88th (R.S.) Leg., effective September 1, 2023

²⁵ Tex. Local Gov't Code §243.0031, as added by SB 12, 88th (R.S.) Leg., effective September 1, 2023