LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

SUBTITLE C. REGULATORY AUTHORITY APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 243. MUNICIPAL AND COUNTY AUTHORITY TO REGULATE SEXUALLY ORIENTED BUSINESS

Sec. 243.001. PURPOSE; EFFECT ON OTHER REGULATORY AUTHORITY. (a) The legislature finds that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity. The purpose of this chapter is to provide local governments a means of remedying this problem.

(b) This chapter does not diminish the authority of a local government to regulate sexually oriented businesses with regard to any matters.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.002. DEFINITION. In this chapter, "sexually oriented business" means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 507, Sec. 4, eff. June 13, 1991.

Sec. 243.003. AUTHORITY TO REGULATE. (a) A municipality by ordinance or a county by order of the commissioners court may adopt regulations regarding sexually oriented businesses as the

municipality or county considers necessary to promote the public health, safety, or welfare.

(b) A regulation adopted by a municipality applies only inside the municipality's corporate limits.

(c) A regulation adopted by a county applies only to the parts of the county outside the corporate limits of a municipality.

(d) In adopting a regulation, a municipality that has in effect a comprehensive zoning ordinance adopted under Chapter 211 must comply with all applicable procedural requirements of that chapter if the regulation is within the scope of that chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.0031. AUTHORITY TO REGULATE CERTAIN SEXUALLY ORIENTED PERFORMANCES. (a) In this section, "sexually oriented performance" has the meaning assigned by Section 43.28, Penal Code.

(b) Subject to Subsection (c), a municipality or county may regulate sexually oriented performances as the municipality or county considers necessary to promote the public health, safety, or welfare.

(c) A municipality or county may not authorize a sexually oriented performance:

(1) on public property; or

(2) in the presence of an individual younger than 18 years of age.

(d) Except as provided by Subsection (c), this section does not limit the authority of a municipality to license, tax, suppress, prevent, or otherwise regulate theatrical or other exhibitions, shows, or amusements under Section 215.032.

Added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 2, eff. September 1, 2023.

Sec. 243.004. EXEMPT BUSINESS. The following are exempt from regulation under this chapter:

(1) a bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store under Section 243.002;

(2) a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held; or

(3) a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.005. BUSINESS LICENSED UNDER ALCOHOLIC BEVERAGE CODE: BUSINESS HAVING COIN-OPERATED MACHINES. (a) A business is not exempt from regulation under this chapter because it holds a license or permit under the Alcoholic Beverage Code authorizing the sale or service of alcoholic beverages or because it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(b) A regulation adopted under this chapter may not discriminate against a business on the basis of whether the business holds a license or permit under the Alcoholic Beverage Code or on the basis of whether it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(c) This chapter does not affect the existing preemption by the state of the regulation of alcoholic beverages and the alcoholic beverage industry as provided by Section 1.06, Alcoholic Beverage Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.006. SCOPE OF REGULATION. (a) The location of sexually oriented businesses may be:

(1) restricted to particular areas; or

(2) prohibited within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the municipality or county finds to be inconsistent with the operation of a sexually

oriented business.

(b) A municipality or county may restrict the density of sexually oriented businesses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.007. LICENSES OR PERMITS. (a) A municipality or county may require that an owner or operator of a sexually oriented business obtain a license or other permit or renew a license or other permit on a periodic basis for the operation of a sexually oriented business. An application for a license or other permit must be made in accordance with the regulations adopted by the municipality or county.

(b) The municipal or county regulations adopted under this chapter may provide for the denial, suspension, or revocation of a license or other permit by the municipality or county.

(c) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a license or other permit by a municipality or county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 417, Sec. 1, eff. June 7, 1991.

Sec. 243.0075. NOTICE BY SIGN. (a) An applicant for a license or permit issued under Section 243.007 for a location not currently licensed or permitted shall, not later than the 60th day before the date the application is filed, prominently post an outdoor sign at the location stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of the applicant.

(b) A person who intends to operate a sexually oriented business in the jurisdiction of a municipality or county that does not require the owner or operator of a sexually oriented business to obtain a license or permit shall, not later than the 60th day before the date the person intends to begin operation of the business, prominently post an outdoor sign at the location stating that a sexually oriented business is intended to be located on the

premises and providing the name and business address of the owner and operator.

(c) The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The municipality or county in which the sexually oriented business is to be located may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

Added by Acts 1999, 76th Leg., ch. 1109, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 648 (S.B. 1030), Sec. 1, eff. June 17, 2011.

Sec. 243.008. INSPECTION. A municipality or county may inspect a sexually oriented business to determine compliance with this chapter and regulations adopted under this chapter by the municipality or county.

Added by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.009. FEES. A municipality or county may impose fees on applicants for a license or other permit issued under this chapter or for the renewal of the license or other permit. The fees must be based on the cost of processing the applications and investigating the applicants.

Added by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.010. ENFORCEMENT. (a) A municipality or county may sue in the district court for an injunction to prohibit the violation of a regulation adopted under this chapter.

(b) A person commits an offense if the person violates a municipal or county regulation adopted under this chapter. An offense under this subsection is a Class A misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(p), eff. Aug. 28, 1989. Renumbered from Sec. 243.008 and amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.011. EFFECT ON OTHER LAWS. This chapter does not legalize anything prohibited under the Penal Code or other state law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 243.009 by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.