



Key Concepts for Clubs

There is no substitute for appropriate legal counsel: while legal advice may be expensive, it is essential to have the support of attorneys in the formation and maintenance of a club. That includes a corporate attorney, a criminal attorney and a tax attorney. Any changes to your club policies can have big impacts, and by consulting with your attorneys, you can avoid the slippery slope of non-compliance over time.

NCSF is not a legal aid service, nor do we offer specific legal advice for clubs or individuals. NCSF provides publicly available information for consenting adults in the kink, poly and Lifestyle communities and for professionals seeking information about them.

Administrative Process

Agencies can conduct an administrative process to determine if your club is in compliance with the law. This is a common way that clubs are shut down. Since you need to be represented by an attorney, it is as expensive as a trial. Once a club has been shut down under administrative process, then you have to appeal the ruling, which is another trial. An administrative process could be started by local and state agencies, including the Building Department, Fire Marshal, Health Department, licensing and zoning officials. Law enforcement agencies enforce everything from noise and parking ordinances to Vice laws.

Adults Only

You must make it clear on your website and promotional material that your club is for adults only. That means 18 and older, and over 21 if your club offers BYOB service, ie. members bring their own bottle of alcohol and the club holds and serves it to that member. It does not matter what the age of sexual consent is in your state. You must card every single person that enters the club, no exceptions. You never know when an undercover officer is present: sex trafficking is an increasing concern among law enforcement, so they are vigilant about pursuing reports of sexual activities with those under 18.

Adverse Secondary Effects

Adverse Secondary Effects is a legal doctrine that enables cities to regulate sexually oriented businesses as long as the aim is to prevent crime, depreciation of property values and spread of disease. A Secondary Effects Study measures the adverse secondary effects, both direct and indirect, of a sexually oriented business on the neighborhood. These studies are used to justify

closing down sexually oriented businesses, or when no correlation to crime or lowered property values is shown, to allow clubs to remain open. In *Los Angeles v. Alameda Books* (2002) the court found that evidence that was shoddy or not derived from a specific area does not justify regulation, and the ruling places the burden of proof on the government for collecting “substantial” data to justify the claims of adverse secondary effects.

Charitable Foundation

In addition to your membership organization, some clubs have also created a charitable foundation to accept tax deductible donations. Typically, these kinds of charitable 501(c)3 foundations work to eliminate prejudice and discrimination, and to defend human and civil rights. Education in the form of community workshops about relationships and skills-building don't qualify as a 501(c)3 exempt purpose.

Fire Marshal

A Fire Marshal can shut down your club if your property isn't up to code. Fire Marshals are government officials who are empowered to inspect the premises, with enforcement capabilities. Sometimes they work with the building department and sometimes independently. The International Fire Code (IFC) establishes minimum regulations for fire prevention and fire protection systems using prescriptive and performance-related provisions. The provisions of the IFC provide protection for public health, safety and welfare from the hazards of fire, explosion or dangerous conditions in buildings, structures and premises. You can hire companies to inspect your club for you prior to landlord and fire marshal inspections. This includes ingress/egress/maximum occupancy and sprinklers/hazards, etc.

Freedom of Association

Freedom of association includes an individual's right to join or leave groups voluntarily, the right of the group to take collective action to pursue the interests of its members, and the right of an association to accept or decline membership based on certain criteria. In order for freedom of association to apply, you must show discernment which is the ability to distinguish or judge someone on their qualification for membership—this is the key to the Constitutional Protection.

Health Department

The Health Department is a government agency. There may be Health Department regulations or Sanitary Codes against sexual activity taking place in businesses in your state/county due to the potential for STIs. Some clubs have reached out to their local Health Department and

arranged for free STI testing to take place at their club on certain nights/events. For testing, you need to provide a small private room or an area that can be curtained off for the testing.

House Party

If you hold parties that are “regular and habitual” and live in a residential zone, then you could be accused of running a business or social club from your home. If you collect money for attendance, either online or at the door, then you could be accused of running a business or social club from your home. This may result in a warning to cease the activities and/or a fine. House Parties have been featured in the media with the address and names of the homeowners publicized. Parking and noise complaints about house parties often lead to the involvement of zoning officials.

Licenses

As a business, you will need to get licenses to operate. There is licensing paperwork that needs to be taken care of and maintained annually. If you are a business and rent out your venue, you may have to get a license for that (501(c)7 social groups aren’t supposed to rent out their premises). Also, if you sell food, even if it’s packaged snacks, there may be a license for that and you have to pay sales tax. If you allow toys to be sold on-premises, then your business could be considered to be selling adult entertainment merchandise.

Liquor Laws

You can’t sell alcohol unless you have a license to do so. Special events can get a temporary liquor permit depending on the venue and caterer. However, liquor permits typically require that there be no nudity or touching of genitals or breasts. It is typically not necessary to have a liquor license for BYOB, whereby members bring their own bottles which are stored behind a “bar” and served by the staff of the club.

Live Entertainment

Even if you don’t pay performers to dance on a pole, your club may be considered to be “providing” live entertainment if you are providing a venue where people can see others have sex. “Watching” is the hallmark of live entertainment, so allowing people to watch someone have sex has been used to label clubs as a Sexually Oriented Business. Clubs have gotten around this by creating cubicles with doors that can be closed. That way any sexual activity is technically taking place in private, though doors can be cracked or left unlocked to indicate others are welcome inside. Notice should be given that there is no expectation that any door you close will remain closed, and that staff can enter to ensure safety.

Live Sex Act Business Code

Also known as the Phoenix Ordinance. On December 9, 1998, the Phoenix City Council unanimously passed an ordinance which made it a nuisance crime to own or operate a swingers club, resulting in fines and closure. The Scottsdale-based National Family Legal Foundation, a conservative Christian organization, helped Phoenix city attorneys draft the law. Since then, a number of other cities have passed their own version. In August 2019, the City Council in Ft. Wayne, Indiana, considered a Live Sex Act Businesses ordinance to shut down The Champagne Club. City Council Member John Crawford argued successfully against it because it was based on morality, stating, “Based on all the evidence and data I’ve found on this club, I don’t think they are hurting anyone and the citizens are living their lives as they see fit.”

Noise Ordinance

Many agencies only respond to complaints, and the two biggest reasons why neighbors complain about clubs and parties is due to loud noise and parking issues. Check to see if your music can be heard outside, and if so, turn the sound down or put in insulation. Restrict members from talking on the sidewalk near the neighbors or in the backyard if it abuts other neighboring yards. If smoking is done outside, check to be sure the smoke is not drifting into a neighbor’s yard.

Occupancy Permit

A certificate of occupancy is often required when you purchase a property or when a property is changing from one use to another. The building department or department of housing conducts a series of inspections before granting a C of O. The certificate of occupancy describes what class the property is in: residential, retail, commercial, industrial or a mixed-use property. The Occupancy Permit also serves as proof that a property has complied with all standards and codes, such as the number of exits and bathrooms. It also ensures the property has passed inspection according to all housing and building codes, such as electrical wiring.

Private Members-Only Club

For-profit clubs can be incorporated as an LLC, partnership or sole-proprietorship, and are typically operated as private members-only organizations. When people come in, they buy a membership rather than entry to the club. This allows for club confidentiality for members. According to the Supreme Court ruling in *Recreational Developments v. The City of Phoenix*, the following criteria must be met for a club to be private: membership must be selective with an established criteria that must be met; membership must be limited in size and limited in the frequency of adding new members; and the addition of new members is voted on.

Public Nuisance

Each city has its own code on public nuisances, which includes a wide variety of offenses that threaten the health, safety, welfare and even morals of a community. Maintaining a public nuisance is knowingly causing or permitting a condition to exist which injures or endangers the public health, safety or welfare. Violation may result in the revocation of your business licenses.

Right to Assemble

Clubs rely on the right to assemble and must defend this principle. The First Amendment to the United States Constitution states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble..."

Right to Intimate Association

Under the 14th Amendment, there is the right to due process in the administration of justice that acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law. One of the reasons the Phoenix Ordinance was upheld by the Supreme Court was that there was no right to privacy in "public" based on *Bowers v. Hardwick* (1986). This case has since been overturned by *Lawrence v. Texas*, in which the Supreme Court reasoned that Lawrence and Garner were free as adults to engage in the private conduct in the exercise of their liberty under the Due Process Clause. The Court went further to say you cannot stigmatize private sexual conduct simply because some might believe it is "immoral."

Sexually Oriented Business Tax

This is a fee that must be paid for every customer by businesses that provide live nude entertainment or live nude performances as defined by the jurisdiction, and authorize on-premises consumption of alcoholic beverages regardless of whether the business is required to hold a license or permit under the Alcoholic Beverage Code. A SOB tax can be applied retroactively for every customer who has entered if your club is labeled as an SOB by the authorities.

Social Club

Social clubs are typically incorporated as 501(c)7 Tax Exempt Social and Recreational Clubs. As a membership organization, Social Clubs are considered "private" which allows for sexual activity to take place in the club. In order to be considered a not-for-profit Social Club, you must provide an opportunity for personal contact among members, with the membership limited in number and each member voted into the club (often by an elected Board or Membership

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Committee). In order to be tax-exempt, the club's income must come from fees, dues, and assessments on the members, and the club may receive minimal income from nontraditional sources. The organization's net earnings may not inure to the benefit of any person having a personal and private interest in its activities. Reciprocal memberships, lifetime memberships, and complimentary memberships may risk status. In order to be considered private, there is an expectation of barriers to entry, such as a membership application, an orientation, and a waiting period before attending club events.

Vice Laws

Sometimes called "blue laws," these are laws that govern people's moral behavior in regards to sexual activities. They are often no longer enforced. However, a vice law has had a chilling effect on BDSM play parties in Massachusetts, for example, because legally you cannot facilitate sex or "abuse" which is often interpreted to include BDSM activities.

Zoning Ordinance

Zoning defines how a property in a specific geographic zone can be used. You must be sure your club is located in the correctly zoned area, which is typically in rural, industrial or industrial/commercial zones. Some zoning ordinances have a requirement that adult clubs must be a certain number of feet from a school or church.

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