



Organizing to Protect Yourself from Sexually Oriented Business (SOB) Laws

Sexually Oriented Business (SOB) laws can impose severe restrictions on adult entertainment businesses and workers, often infringing on constitutional rights and perpetuating harmful stigma. To protect yourself and your business, organizing effectively is critical. Below are practical steps to fight back against these laws, including strategies for operating as a private club, avoiding the appearance of being an SOB, understanding obscenity laws, minimizing the appearance of adverse secondary effects, cleaning up your online presence, and leveraging legal arguments to defend your rights.

1. Becoming a 501(c)(7) to Protect Yourself

One of the most effective ways to protect your business from being classified as a sexually oriented business (SOB) is to operate as a 501(c)(7) tax-exempt social club. This designation, provided by the Internal Revenue Service (IRS), is specifically for organizations that are private membership clubs organized for pleasure, recreation, and other non-profit purposes. By becoming a 501(c)(7), you can legally distinguish your business from an SOB and gain additional legal protections.

What is a 501(c)(7)?

A 501(c)(7) is a tax-exempt status for social and recreational clubs that meet certain IRS requirements. These clubs are not-for-profit organizations that exist to serve their members rather than the general public.

Benefits of Becoming a 501(c)(7)

- **Legal Distinction:** Operating as a private membership club under 501(c)(7) status helps distinguish your organization from a public business, reducing the likelihood of being classified as an SOB.
- **Tax Advantages:** As a 501(c)(7), your organization is exempt from federal income tax on revenue generated from members, provided it meets IRS guidelines.
- **Privacy Protections:** Membership-based organizations are generally afforded greater privacy and protection from government scrutiny.
- **Exemption from Public Regulations:** Many SOB laws and zoning restrictions are designed for public businesses. As a private membership club, you may be exempt from these regulations.
- **Enhanced Credibility:** Operating as a 501(c)(7) demonstrates that your organization is legitimate, community-oriented, and focused on providing social and recreational benefits to members.

Requirements to Qualify as a 501(c)(7)

To qualify as a 501(c)(7) organization, you must meet the following criteria:

1. **Purpose:** The club must be organized for pleasure, recreation, or other non-profit purposes.
2. **Membership:** The club must have a limited membership and restrict access to non-members.
3. **Non-Profit Operation:** The organization must operate on a not-for-profit basis. Any revenue generated must be used to cover operating costs, improve the club, or provide additional benefits to members.
4. **Member Revenue:** At least 65% of the club's revenue must come from members' dues, fees, or assessments. Non-member revenue (e.g., guest fees or events open to the public) must remain below 35%.
5. **Private Use:** The facilities and activities must primarily benefit members and their guests, not the general public.

Steps to Become a 501(c)(7)

1. **Form a Legal Entity:** Establish your organization as a legal entity, such as a corporation or LLC, in your state.
2. **Draft Bylaws:** Create bylaws that outline the purpose of your club, membership rules, and how the organization will operate. Emphasize the social and recreational nature of your club.
3. **Establish Membership Requirements:**
 - Require a formal application process for membership.
 - Charge annual membership dues rather than a simple entrance fee.
 - Vet members to ensure exclusivity and align with the club's purpose.
4. **File Articles of Incorporation:** Submit articles of incorporation to your state's Secretary of State, specifying that your organization is a non-profit.
5. **Apply for an EIN:** Obtain an Employer Identification Number (EIN) from the IRS for tax purposes.
6. **File Form 1024:** Complete and submit IRS Form 1024 (Application for Recognition of Exemption Under Section 501(a)) to apply for 501(c)(7) status. Include all required documentation, such as your bylaws and financial statements.
7. **Maintain Compliance:**
 - Keep detailed records of membership dues, expenses, and activities.
 - Ensure that non-member revenue does not exceed the IRS limits.
 - File annual Form 990 or Form 990-N with the IRS to maintain your tax-exempt status.

Best Practices for Operating as a 501(c)(7)

- **Limit Public Access:** Ensure that your club is truly private by restricting access to members and their guests. Avoid advertising events or activities to the general public.
- **Focus on Social and Recreational Activities:** Emphasize the social and recreational aspects of your club in all materials, including your website, social media, and bylaws.

- **Avoid Profit Motives:** Any surplus revenue should be reinvested into the club to improve facilities or provide additional benefits to members. You can pay managers and staff as a 501(c)7, but you can't take money out as profit.
- **Maintain Exclusivity:** A strong membership vetting process and annual dues reinforce the private nature of your club.

By becoming a 501(c)(7), you can protect your organization from being classified as a sexually oriented business, gain tax advantages, and operate with greater legal protections and credibility.

2. Clean Up Your Website and Social Media

Your website and social media presence are often the first things authorities, neighbors, or potential critics will examine when scrutinizing your business. A professional, clean, and socially oriented online presence can help reduce the risk of being labeled as a sexually oriented business or facing legal challenges.

Why Clean Up Your Online Presence?

- **Avoid Misclassification:** Explicit photos or language can make your business appear to be a sexually oriented business, even if it operates as a private club or a social gathering space.
- **Reduce Scrutiny:** A professional and socially focused online presence reduces the likelihood of complaints from neighbors, community members, or authorities.
- **Attract a Broader Audience:** A clean and inclusive online presence can help attract members who value the social and community aspects of your venue.

What to Remove or Avoid

- **Photos with Mattresses:** Photos of mattresses or bedding can suggest sexual activity, which may lead to your business being classified as a sexually oriented business. Remove these images from your website and social media.
- **Explicit Images:** Avoid posting any photos or videos that are sexually explicit or suggestive. Even photos that are not legally obscene may still attract unwanted scrutiny.
- **Overtly Sexual Language:** Review your website and social media for language that could be interpreted as promoting sexual activity. Replace it with language that emphasizes social, recreational, or educational aspects of your venue.

What to Include

- **Social and Community-Oriented Photos:**
 - Post photos of people socializing, dancing, or attending workshops to emphasize the social nature of your venue.
 - Highlight events such as game nights, educational seminars, or wellness activities.
- **Professional and Welcoming Imagery:**
 - Use high-quality, professional photos that showcase your venue as clean, safe, and welcoming.
 - Include images of communal spaces, such as lounges, bars, or outdoor areas, rather than private or intimate settings.
- **Inclusive Messaging:**
 - Use language that reflects inclusivity and a focus on community. Highlight your venue's commitment to creating a safe and respectful environment for all members.
 - Include photos of diverse body types, nationalities, and ages.
- **Event Highlights:**
 - Highlight non-sexual events or activities, such as charity fundraisers, educational workshops, or community gatherings, to demonstrate the diverse offerings of your venue.

Best Practices for Social Media

- **Monitor Comments:** Regularly review comments on your social media posts to ensure that they align with your venue's image and policies. Remove inappropriate or explicit comments promptly.
- **Engage with Followers:** Respond to questions and comments in a professional and friendly manner. This helps build trust and reinforces your venue's positive image.
- **Stay Consistent:** Ensure that your messaging and imagery are consistent across all platforms, including your website, Facebook, Instagram, and other social media accounts.

By cleaning up your website and social media, you can present your business as a professional and socially oriented venue, reducing the risk of scrutiny and helping to build a positive reputation in your community.

3. Build a Coalition of Workers, Businesses, and Allies

A united front of workers, business owners, patrons, and allies is essential for challenging SOB laws. By working together, you can amplify your voice and create a stronger defense.

- **Form Local Advocacy Groups:** Create or join a union, association, or informal collective for workers and businesses in the adult industry. Join with adult bookstores other vendors who together can help fight these laws and ordinances.
- **Make friends with the neighbors:** The support of your neighbors is something that is invaluable when these hearings happen. Zoning Boards and other government agencies invoke a community's right to decide on standards, so if your neighborhood supports you, it weakens that argument.
- **Join the National Coalition for Sexual Freedom (NCSF):** The NCSF is a national organization that works to protect the rights of consenting adults who engage in alternative sexual practices, including those involved in sexually oriented businesses. By becoming a Coalition Partner, you gain access to resources, legal support, and a network of advocates who can help fight against restrictive SOB laws.
- **Involve Allies:** Partner with organizations that support First Amendment rights, workers' rights, and LGBTQ+ rights, such as the ACLU, labor unions, and local community groups.
- **National Networking:** Connect with other national organizations like the Free Speech Coalition (FSC), OPEN or Woodhull Freedom Foundation, which specialize in defending adult businesses and workers.

4. Be Proactive with Local Government

Many SOB laws and taxes are enacted at the local level, making it crucial to stay engaged with your city or county government.

- **Monitor Local Government:** Pay close attention to your Board of Supervisors, City Council, or any governing body responsible for levying taxes, zoning restrictions, or SOB regulations.

- **Attend Meetings:** Regularly attend public meetings where these issues may be discussed. Your presence shows that you are paying attention and ready to advocate for your rights.
- **Engage with Officials:** Build relationships with local officials and educate them about the economic and social contributions of your business. Personal connections can influence their decision-making.
- **Act Early:** Once a law or tax is enacted, it becomes much harder to fight. Early involvement is critical to preventing restrictive measures before they are passed.

By staying proactive and involved, you can prevent harmful regulations from being enacted and protect your business and community.

5. Obscenity Laws and Barriers to Entry

Understanding obscenity laws is essential for protecting your business and avoiding legal trouble. These laws often prohibit sexual activity in public view, but what constitutes "public" can vary depending on your operations and whether you have a true barrier to entry.

Obscenity Laws and Public View

- **Sexual Activity in Public:** Obscenity laws typically prohibit sexual activity that can be seen by the public. If your venue allows sexual activity in areas visible to others without proper barriers, you could be at risk of violating these laws.
- **What Defines "Public":** Municipalities often define "public" very broadly. If your club does not have a legitimate barrier to entry, they may consider your venue public, even if you operate as a private club.

Barriers to Entry

- **The Importance of a Real Barrier:** A barrier to entry must be substantial and meaningful. Simply charging an entrance fee or allowing someone to pay and walk in is not considered a real barrier.
- **Case Law Examples:** There is well-defined case law that clarifies what constitutes a barrier to entry:
 - **Eagle Books v. City of Chicago:** This case established that a meaningful barrier to entry must exist to distinguish private spaces from public ones.

- **Power Exchange v. California:** This case reinforced the need for legitimate barriers to entry in private clubs to avoid being classified as public spaces.
- **Hendricks v. Commonwealth:** This was the hallmark case which established what ‘barriers to entry’ need to look like. There were 9 specific points where this club, Mousetrap Burlesque and Artistic Dance Preservation Society, who became a ‘private club’ in order to skirt the Sexually Oriented Business Ordinances:
 - Permanency of Membership
 - Substantiality of dues
 - Numerical limit on membership
 - Formality of admission procedure
 - Standards for admission
 - Membership control over operation of the facility
 - The club’s purpose
 - Use of club facilities by non-members
 - History of the organization
- **Best Practices for Barriers:**
 - Require a formal application process for membership.
 - Set consent expectations and rules for interacting with other members.
 - Charge annual membership dues rather than a simple entrance fee.
 - This fee must be more substantial than ‘token’.
 - Vet members before granting access to ensure exclusivity.
 - Show discretion and discernment.
 - There must be standards for admission.
 - Avoid advertising in ways that suggests your club is open to the general public.
 - With few exceptions, every activity must be for the use of members only.

- Focus on community and education rather than parties in your promotional materials.

How Obscenity Laws Are Invoked

- **Complaints Trigger Investigations:** In many jurisdictions, obscenity laws can be invoked when someone goes to an authority and says, “I am offended.” This simple complaint can be enough to establish probable cause for an investigation.
- **You Are on the Defense:** Once an investigation begins, the burden often falls on you to prove that your venue is not in violation of obscenity laws. This can be costly and time-consuming, so proactive measures to avoid complaints are critical.

By ensuring your venue has a real and enforceable barrier to entry, you can reduce the risk of being classified as public and avoid legal issues related to obscenity laws.

6. Avoiding the Appearance of Adverse Secondary Effects

The **Adverse Secondary Effects Doctrine** is a legal principle that allows cities to regulate sexually oriented businesses (SOBs) under the justification of preventing crime, property value depreciation, and the spread of disease. Understanding this doctrine and taking proactive steps to mitigate its appearance can help protect your business.

What Are Adverse Secondary Effects?

- **Definition:** Adverse secondary effects refer to negative impacts that a sexually oriented business may have on its surrounding area, such as:
 - Increased crime rates.
 - Lowered property values.
 - Public health concerns, such as the spread of sexually transmitted diseases.
- **Secondary Effects Studies:** Municipalities often conduct studies to measure the direct and indirect impact of SOBs on neighborhoods. These studies are used to justify regulations, zoning restrictions, or even the closure of SOBs.

Legal Precedent

- **Los Angeles v. Alameda Books (2002):** In this landmark case, the U.S. Supreme Court ruled that municipalities must provide substantial and reliable evidence to justify regulations based on adverse secondary effects. Shoddy or irrelevant studies do not meet the burden of proof.

- The ruling places the burden of proof on the government to collect data directly tied to the specific area in question.
- Without credible evidence, regulations cannot be justified.

How to Avoid the Appearance of Adverse Secondary Effects

- **Crime Prevention:**

- Hire trained security personnel to monitor the premises and surrounding area.
 - Avoid activities that may require law enforcement resources.
 - Hiring off-duty police for this function is often a benefit.
- Install surveillance cameras to deter criminal activity and provide evidence in case of disputes.
- Build relationships with local law enforcement to demonstrate your commitment to safety.

- **Property Value Protection:**

- Maintain a clean and professional exterior for your venue.
- Invest in landscaping, lighting, and upkeep to improve the appearance of your property.
 - Be very careful about signage. Often municipalities have very strict rules about signage. Discretion about names that are visible to the public can avoid unwanted attention.
- Engage with neighboring businesses and residents to foster goodwill and address concerns.
 - Participate in neighborhood cleanup and beautification efforts. Leaving it better than you found it weakens the argument.
 - If you share resources with other businesses (parking lots, entries etc.), throughout events and at the end of the night, make sure you've left it better than you found it.

- **Public Health Measures:**

- Provide resources for sexual health education, such as free condoms or informational pamphlets.
- Host workshops or events focused on health and wellness. Provide STI testing, and safer sex classes.
- Ensure that your venue adheres to all local health codes and safety standards.

By actively addressing these issues and presenting yourself as a responsible business, you can mitigate the appearance of adverse secondary effects and reduce the likelihood of regulatory action.

7. Other Notes on How Not to Look Like an SOB as a Private Club

When operating as a private club, it's important to avoid the appearance of being a sexually oriented business. This can help reduce scrutiny and protect your organization from restrictive SOB laws.

Health and Safety

- Maintain a clean, professional, and welcoming environment.
- Implement strict health and safety protocols, including regular cleaning, proper ventilation, and adherence to all local health codes.
- Provide safety training for staff and members to ensure everyone feels secure and respected.

Barriers to Entry

- Operate as a members-only club with clear membership requirements. Require applications, membership fees, or a vetting process to create exclusivity and distinguish yourself from public businesses.

Avoid advertising that resembles typical SOB promotions. Focus on promoting the club's social and recreational aspects instead.

Avoiding the Appearance of 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 offering a venue where people can see others engage in sexual activity. Watching is often considered the hallmark of live entertainment,

and allowing people to watch someone have sex has been used to label clubs as a Sexually Oriented Business.

- **Create Private Spaces:** To avoid this designation, create cubicles or rooms with doors that can be closed. This ensures that any sexual activity is technically taking place in private.
- **Indicate Openness with Doors:** Doors can be cracked open or left unlocked to signal that others are welcome to join, but the activity remains private unless explicitly invited.
- **Establish Safety Policies:** Post notices stating that there is no expectation that a closed door will remain closed and that staff may enter at any time to ensure safety.
- **Train Staff:** Train staff to monitor the premises discreetly and intervene when necessary to maintain safety and compliance with club policies.

8. Leases and Property Owners

You must be honest with your landlord. You cannot hide or misrepresent what you are. That can be fraud and could be criminal. It is important that you are honest. It is much better to lose the space prior to opening, than be forced to close and be potentially liable for lease costs, as well as potential criminal charges.

- Tell them what you do
- Give boundaries to the hours you are open
- Don't live on the property unless they know

9. Make sure you are properly licensed and insured.

- Every municipality is different. Do your due diligence PRIOR to obligating yourself financially.
- Look at the current SOB laws in the jurisdiction. If they have the "Absolute Prohibition" ordinance, you may still have trouble, even if you are a 501 (c) 7, please reach out.

10. Get the right professionals in your corner.

- A tax attorney to help you with your 501 (c) 7 organization, and how the money works.
- A corporate attorney to help you organize and to navigate your municipal requirements.
- A criminal attorney to double check the local laws and to have that relationship prior to needing it.
- A qualified CPA to help you stay on top of your accounting and filings.

- A great insurance agent who understands your business and can get you the insurance you need.