



SEIZURE OF PORNOGRAPHIC MATERIAL

Enforcement Division
Policy Number: LE 2.04.00

Effective Date: 2/1/08

POLICY

Certified peace officers (CPOs) will not seize pornographic material without:

- (1) authorization from the Legal Services Division; or
- (2) a valid search warrant.

CPOs may enforce § 104.01(6) of the Alcoholic Beverage Code as it applies to acts such as public lewdness and prostitution.

CPOs may enforce Administrative Rule 35.31(c)(12) as it applies to printed or recorded material.

CPOs will not enforce §§ 104.64 and 104.01(6) of the Alcoholic Beverage Code as they apply to printed or recorded material.

PROCEDURES

- a. If a CPO seizes pornographic material pursuant to a search warrant or approval from the Legal Services Division, he or she will ensure that the evidence is in a container that protects the evidence from view.
- b. The CPO will maintain and document the evidence according to *Seizure of Property*, § 2.03.00 of this manual.

RULES

Alcoholic Beverage Code § 104.01. Lewd, Immoral, Indecent Conduct.

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts... (6) permitting lewd or vulgar entertainment or acts...

Alcoholic Beverage Code § 11.61(b)(7). "Place or Manner Violation."

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:

(7) the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency...

Alcoholic Beverage Code § 61.71(a)(17). "Place or Manner Violation."

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premises license if it is found, after notice and

hearing, that the licensee:

(17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people...

Commission Rule § 35.31. Offenses Against the General Welfare.

(a) This rule relates to §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) of the Alcoholic Beverage Code.

(b) A licensee or permittee violates the provisions of the Alcoholic Beverage Code cited in paragraph (a) of this rule if any of the offenses listed in paragraph (c) of this rule are committed:

- 1) by the licensee or permittee in the course of conducting his/her alcoholic beverage business; or
- 2) by any person on the licensee or permittee's licensed premises; and
- 3) the licensee or permittee knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.

(c) The offenses that are the subject of this rule are as follows:

- 1) any preparatory offense described in Chapter 15 of the Texas Penal Code;
- 2) any homicide offense described in Chapter 19 of the Texas Penal Code;
- 3) any sexual offense described in Chapter 21 of the Texas Penal Code;
- 4) any assaultive offense described in Chapter 22 of the Texas Penal Code;
- 5) any arson, criminal mischief or property damage or destruction offense described in Chapter 28 of the Texas Penal Code;
- 6) any theft offense described in Chapter 31 of the Texas Penal Code;
- 7) any fraud offense described in Chapter 32 of the Texas Penal Code;
- 8) any money laundering offense described in Chapter 34 of the Texas Penal Code;
- 9) any bribery offense described in Chapter 36 of the Texas Penal Code;
- 10) any obstruction offense described in Chapter 38 of the Texas Penal Code;
- 11) any disorderly conduct or related offenses described in Chapter 42 of the Texas Penal Code;
- 12) **any public indecency offense described in Chapter 43 of the Texas Penal Code;**
- 13) any weapons offense described in Chapter 46 of the Texas Penal Code;
- 14) any gambling offense described in Chapter 47 of the Texas Penal Code;
- 15) any narcotics related offense described in Chapters 481 and 483 of the Texas Health and Safety Code;
- 16) any law, regulation or ordinance of the federal government or of the county or municipality in which the licensed premises is located, violation of which is detrimental to the general welfare, health, peace and safety of the people.

(d) This rule does not constitute the exclusive means by which §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) may be violated.