

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
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## MEMORANDUM

TO: Dr. Grant Colfax, Director, Department of Public Health

FROM: John Carroll, Assistant Clerk,  
Public Safety and Neighborhood Services Committee,  
Board of Supervisors

DATE: February 19, 2020

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Mandelman on February 11, 2020:

**File No. 200141**

**Ordinance amending the Health Code to require the Director of Health to adopt minimum health and safety standards governing the operation of commercial adult sex venues, but prohibiting the Director from adopting standards that require monitoring of patrons' sexual activities, or that regulate doors or mandate unlocked doors in areas where sexual activity may occur.**

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Greg Wagner, Department of Public Health  
Dr. Naveena Bobba, Department of Public Health  
Sneha Patil, Department of Public Health

1 [Health Code - Adult Sex Venue Health and Safety Standards]

2  
3 **Ordinance amending the Health Code to require the Director of Health to adopt**  
4 **minimum health and safety standards governing the operation of commercial adult sex**  
5 **venues, but prohibiting the Director from adopting standards that require monitoring of**  
6 **patrons' sexual activities, or that regulate doors or mandate unlocked doors in areas**  
7 **where sexual activity may occur.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
11 **Board amendment additions** are in double-underlined Arial font.  
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The Health Code is hereby amended by adding Article 47, consisting of  
17 Sections 4701 through 4704, to read as follows:

18 **ARTICLE 47: ADULT SEX VENUES**

19 **SEC. 4701. FINDINGS.**

20 (a) In the early 1980s, there were many business establishments in the City where men met  
21 other men for sex. These businesses included bookstores with video booths, movie theaters, and bath  
22 houses.

23 (b) In 1984, at the height of the AIDS epidemic, the City filed a lawsuit against the  
24 operators of several such businesses, citing them as a public health nuisance. The court concluded that  
25 these businesses presented a public health risk, and issued an order allowing the businesses to remain

1 open on the condition that they employ monitors to prevent unsafe sex from occurring, and provide  
2 education to the patrons. To facilitate the monitoring of the venues, the court further ordered that the  
3 doors to individual video cubicles, booths, or rooms be modified by removing the bottom 24-39 inches  
4 of such doors. Although the bathhouses could have legally remained open under the rules established  
5 by the court, most of them closed. In 1989, the City dismissed the lawsuit against the majority of  
6 defendants, and the court order requiring the use of monitors and modified doors was vacated as to  
7 those defendants.

8 (c) In 1997, the Department of Public Health adopted minimum standards governing the  
9 operation of commercial sex clubs and parties. These minimum standards were intended to make  
10 commercial sex clubs and parties safe, and were developed in consultation with the Coalition for  
11 Healthy Sex. The minimum standards that were developed in 1997, much like the court order that  
12 preceded them, required that all areas of commercial sex clubs and parties be monitored on a regular  
13 basis by staff, and prohibited commercial sex clubs and parties from having booths, cubicles, or rooms  
14 to which patrons have access that may be locked. The minimum standards that are in effect as of  
15 February 2020 include the same restrictions.

16 (d) Advances in biomedical prevention strategies have provided tools to reduce the  
17 likelihood of HIV transmission and acquisition and reduce the adverse health impacts of HIV. These  
18 tools include the availability of PrEP (preexposure prophylaxis) to prevent HIV infection, rapid access  
19 to antiretroviral therapy for people newly diagnosed with HIV, and successful efforts to increase viral  
20 suppression among people living with HIV in San Francisco through strategies and programs that  
21 increase retention in care and treatment. According to the Department, in 2018 the number of new  
22 AIDS diagnoses in San Francisco dropped to 197, marking a 58% decrease as compared to the number  
23 of new AIDS diagnoses in 2011.

1           (e) There is no evidence showing that the monitoring of patrons at commercial venues that  
2 allow people to engage in sexual activity results in safer sex. Indeed, some researchers have concluded  
3 that monitoring has little or no effect on high-risk behaviors.

4           (f) A number of businesses in the City cater to consenting adults who wish to meet and  
5 engage in sexual activities on the premises of the business, or to watch other patrons doing so, under  
6 circumstances that do not involve the violation of any law regulating sexual conduct. These  
7 businesses—adult sex venues—can be an important place for preventing the transmission of  
8 communicable diseases by educating patrons about ways to prevent the transmission of disease, and by  
9 establishing community norms that promote safe sex. When properly operated, adult sex venues assist,  
10 rather than impede, the City’s efforts to control the transmission of HIV, as well as other sexually  
11 transmitted diseases.

12           (g) If not properly operated, however, adult sex venues pose a risk of substantial harm to  
13 the public health. To prevent the spread of HIV infection and other sexually transmitted diseases, it is  
14 imperative that the operators and staff of adult sex venues understand the means by which diseases are  
15 transmitted and take reasonable steps to prevent or stop patrons from engaging in activities that can  
16 spread disease.

17           (h) Nothing in this Article 47 is intended in any way to condone conduct that violates any  
18 law, including California Penal Code Section 647(b), or to condone nonconsensual sexual activity.

19  
20           **SEC. 4702. DEFINITIONS.**

21           "Adult Sex Venue" means any Commercial Establishment that is operated in a manner that  
22 encourages patrons to engage in, or to watch other patrons engaging in, Sexual Activities on the  
23 premises, or that as a regular part of its operations permits patrons to engage in Sexual Activities on  
24 the premises or to watch other patrons doing so.

25           "City" means the City and County of San Francisco.

1 "Commercial Establishment" means a place to which persons are admitted to the premises or  
2 any portion of the premises upon payment of a fee or charge, whether the fee or charge is made at the  
3 time of admission or before or after, such as through fees or charges for membership, food, drink, or  
4 any other product, service, or activity. A Commercial Establishment need not function at all times as  
5 such, but rather may be a place that does not ordinarily function as a business or does not ordinarily  
6 require payment of a fee or charge for admission to the premises or any portion of the premises.

7 "Department" means the Department of Public Health.

8 "Director" means the Director of Health, or the Director's designee.

9 "Sexual activities" means the performance or simulation of the following acts: sexual  
10 intercourse, masturbation, copulation (oral, anal or vaginal), or flagellation; the caressing or fondling  
11 by one adult human being of the anus or genitals of that person or of another adult human being; the  
12 actual or simulated displaying of the pubic hair, anus, vagina, penis, vulva, buttocks, areola, or any  
13 other genitalia of the human body.

14  
15 **SEC. 4703. MINIMUM STANDARDS.**

16 (a) By no later than July 1, 2020, following notice and opportunity for public comment, the  
17 Director shall adopt Minimum Standards Governing the Operation of Adult Sex Venues ("Minimum  
18 Standards"), which shall be designed to protect and promote the health and safety of Adult Sex Venue  
19 patrons. The Minimum Standards may include retention or revision of the Department's existing  
20 minimum standards. Subsequent amendments of the Minimum Standards, if any, are also subject to the  
21 notice and hearing process described above.

22 (b) The Minimum Standards may include, but need not be limited to, requirements that an  
23 Adult Sex Venue:

24 (1) Make available to patrons condoms, lubricant, and other safe sex supplies, as  
25 specified by the Director;

1                   (2) Make available to patrons information relating to the risk of contracting  
2 HIV/AIDS and other sexually transmitted diseases, and the methods of preventing such infections;

3                   (3) Train employees regarding the transmission of sexually transmitted diseases and  
4 the means of prevention;

5                   (4) Ensure that the Adult Sex Venue complies with specified sanitation standards;  
6 and

7                   (5) Such other requirements and/or prohibitions as the Director determines are  
8 necessary and appropriate to protect and promote the health and safety of patrons.

9           (c) The Minimum Standards may not:

10                   (1) Require Adult Sex Venues to monitor patrons' Sexual Activities;

11                   (2) Regulate the presence, construction, size, or type of doors in areas where  
12 patrons are permitted to engage in Sexual Activities; or

13                   (3) Prohibit the use of locks on doors to individual video cubicles, booths, or rooms  
14 where patrons are permitted to engage in Sexual Activities.

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16           **SEC. 4704. UNDERTAKING FOR THE GENERAL WELFARE.**

17           In enacting and implementing this Article 47, the City is assuming an undertaking only to  
18 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an  
19 obligation for breach of which it is liable in money damages to any person who claims that such breach  
20 proximately caused injury.

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22           Section 2. Effective Date. This ordinance shall become effective 30 days after  
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
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ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By:   
ANNE PEARSON  
Deputy City Attorney

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## LEGISLATIVE DIGEST

[Health Code - Adult Sex Venue Health and Safety Standards]

**Ordinance amending the Health Code to require the Director of Health to adopt minimum health and safety standards governing the operation of commercial adult sex venues, but prohibiting the Director from adopting standards that require monitoring of patrons' sexual activities, or that regulate doors or mandate unlocked doors in areas where sexual activity may occur.**

### Existing Law

Currently, the Municipal Code does not regulate commercial adult sex venues. However, the Department of Public Health has promulgated minimum standards governing the operation of commercial sex clubs and parties. These minimum standards establish a variety of guidelines aimed at ensuring that these venues provide a safe environment for their patrons and do not contribute to the spread of sexually transmitted diseases. Among other things, the current minimum standards require that all areas of commercial sex clubs and parties be monitored on a regular basis by staff, and prohibit commercial sex clubs and parties from having booths, cubicles, or rooms to which patrons have access that may be locked.

### Amendments to Current Law

The proposed ordinance would require the Department of Public Health ("DPH"), following notice and opportunity for public comment, to adopt new Minimum Standards Governing the Operation of Adult Sex Venues ("Minimum Standards"). The Minimum Standards must be designed to protect and promote the health and safety of adult sex venue patrons, and may address such topics as: 1) the availability of safe sex supplies; 2) safe sex educational materials for patrons; 3) employee training regarding disease transmission and the means of prevention; 4) sanitation standards; and 5) such other requirements and/or prohibitions that the Director of Health determines are necessary and appropriate to promote the health and safety of patrons.

The proposed ordinance would prohibit DPH from adopting Minimum Standards that: 1) require adult sex venues to monitor patrons' sexual activities; 2) regulate the presence, construction, size, or type of doors in areas where patrons are permitted to engage in sexual activities, and 3) prohibit the use of locks on doors in areas where patrons are permitted to engage in sexual activities.



### Background Information

In the early 1980s, there were many business establishments in the City where men met other men for sex. These businesses included bookstores with video booths, movie theaters, and bath houses. In 1984, at the height of the AIDS epidemic, the City filed a lawsuit against the operators of several such businesses, citing them as a public health nuisance. The court concluded that these businesses presented a public health risk, and issued an order allowing the businesses to remain open on the condition that they employ monitors to prevent unsafe sex from occurring, and provide education to the patrons. To facilitate the monitoring of the venues, the court further ordered that the doors to individual video cubicles, booths, or rooms be modified by removing the bottom 24-39 inches of such doors. Although the bathhouses could have legally remained open under the rules established by the court, most of them closed. In 1989, the City dismissed the lawsuit against the majority of defendants, and the court order requiring the use of monitors and modified doors was vacated as to those defendants.

In 1997, the Department of Public Health adopted minimum standards governing the operation of commercial sex clubs and parties. These minimum standards were intended to make commercial sex clubs and parties safe, and were developed in consultation with the Coalition for Healthy Sex. The minimum standards that were developed in 1997, much like the court order that preceded them, required that all areas of commercial sex clubs and parties be monitored on a regular basis by staff, and prohibited commercial sex clubs and parties from having booths, cubicles, or rooms to which patrons have access that may be locked. The minimum standards that are in effect as of February 2020 include the same restrictions.

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# Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2020 FEB 11 PM 2:25  
BY  Time stamp or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor  inquiries"
- 5. City Attorney Request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Mandelman


Subject:

Health Code - Adult Sex Venue Health and Safety Standards

The text is listed:

Ordinance amending the Health Code to require the Director of Health to adopt minimum health and safety standards governing the operation of commercial adult sex venues, but prohibiting the Director from adopting standards that require monitoring of patrons' sexual activities, or that regulate doors or mandate unlocked doors in areas where sexual activity may occur.

Signature of Sponsoring Supervisor:



For Clerk's Use Only