

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

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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.

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

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

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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

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

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

17 (d) Advances in biomedical prevention strategies have provided tools to reduce the
18 likelihood of HIV transmission and acquisition and reduce the adverse health impacts of HIV. These
19 tools include the availability of PrEP (preexposure prophylaxis) to prevent HIV infection, rapid access
20 to antiretroviral therapy for people newly diagnosed with HIV, and successful efforts to increase viral
21 suppression among people living with HIV in San Francisco through strategies and programs that
22 increase retention in care and treatment. According to the Department, in 2018 the number of new
23 AIDS diagnoses in San Francisco dropped to 197, marking a 58% decrease as compared to the number
24 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.

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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.

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

16 (a) By no later than ~~July 1, 2020~~ January 1, 2021, following notice and opportunity for
17 public comment, the Director shall adopt Minimum Standards Governing the Operation of Adult Sex
18 Venues ("Minimum Standards"), which shall be designed to protect and promote the health and safety
19 of Adult Sex Venue patrons. The Minimum Standards may include retention or revision of the
20 Department's existing minimum standards. Subsequent amendments of the Minimum Standards, if any,
21 are also subject to the 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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