

REVISED LEGISLATIVE DIGEST
(Amended in Committee – July 9, 2020)

[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.

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

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

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