

# **Out of the Tubs, and Into the Streets!**

## **Tracing the history of bathhouse regulations in San Francisco, CA**

**By Stephan Ferris**

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### **ABSTRACT:**

In 1984, San Francisco in effect banned bathhouses in a fear-based response to the raging AIDS epidemic. Despite San Francisco being a progressive leader in the fight against HIV, these venues remained closed for over 36 years, even as our scientific understanding of virus prevention evolved. The persistence of these regulations, despite advances in contemporary scientific understandings of HIV transmission, exemplify how long fear-based regulations can last and serves as a reminder that it usually requires a concerted effort from community activists to see changes made when science and policy do not align.

In 1984, San Francisco effectively shut down gay bathhouses in a desperate attempt to curb HIV transmission, assuming that these venues create what is presently referred to as “super spreader events.” Despite changes in the global understanding of HIV and scientific advances in medication, these cultural centers remained effectively banned for over 36 years.<sup>1</sup> These closures illustrate a fear-based reaction that resulted from a limited knowledge of HIV. Given PrEP and a deeper understanding of the mechanics of transmission, society can now take proactive steps to arrest the spread of the virus. In 2020, this new understanding of HIV transmission—aided by pointed advocacy and community engagement—finally opened the door for bathhouses to return when Supervisor Raphael Mandelman introduced a measure to lift the ban that the city’s Board of Supervisors ultimately approved. This paper will tell the story of advocacy that led to a better alignment of city regulations with contemporary scientific and community practices, and argue that, when properly operated, bathhouses assist, rather than impede, efforts to control the transmission of HIV, as well as other STIs.<sup>2</sup>

Following this introduction, I will detail the history of bathhouses within San Francisco and the broader gay community, then examine the arguments that were initially made in favor of the closures. I will then examine the steps taken in the past several years to finally counter these arguments and reverse the ban in city regulation. As I hope to illuminate, these decisions were emotional and driven by fear; however, given current knowledge of the science around transmission, city officials were able to revisit this issue—setting a precedent that any policies that regulate LGBTQI+ sexuality based on fear of HIV should be revisited through the lens of current practices.

## **The Significance of Bathhouses in Gay Men’s Culture**

While bathhouses have existed throughout history, they only solidified as gay institutions within the last century. Early American bathhouses evolved out of traditional 1920s and ‘30s Turkish and Russian baths, which offered communal hot tubs and showers to all men.<sup>3</sup> Gay bathhouses, in contrast, distinguished themselves from these venues by permitting sex among members and by offering food, entertainment, and private rooms. Despite most jurisdictions criminalizing sex among men, these early bathhouses catered to a mixed male clientele, serving those seeking social networking as well as providing a space for anonymous sexual encounters. Bathhouses also offered patrons rooms with locking doors, a key feature distinguishing these venues from sex clubs. Membership was driven by a common desire to engage with other members, while other similar venues operated as brothels, where membership was a means to sex with employees.

The first American gay bathhouses comparable to what we see today opened in the 1950s and ‘60s and exclusively centered the social and erotic needs of gay men.<sup>4</sup> Some offered full restaurants and nightclub entertainment in addition to fitness equipment and saunas. It was not uncommon for bathhouses to host theme nights or book singers (Bette Middler, for instance, found early success performing in these venues).<sup>5</sup> The baths provided refuge from the outside world and an alternative to expensive hotel rooms and public cruising, which although a fun sport, carries high risk for violence, blackmail, and police involvement. As Berubé argues, bathhouses preceded the gay rights movement by providing men a social setting to assemble that

incorporated established health and safety policies—what some today would label a “safe space” to be gay.<sup>6</sup>

While these pioneering venues provided some safety to build community, early patrons were still subject to harassment by police, with bathhouse owners, staff, and patrons all risking violence, arrest, and public outing. Same-gender sex did not become federally legal until 2003, when the Supreme Court held in *Lawrence v. Texas* that private consensual conduct between people of the same gender is legal. It was a state issue before this, and each state could define which sexual acts were prohibited. In California, before 1976, all sex acts between men were considered “illegal as ‘crimes against nature,’” regardless of whether the act was public or private.<sup>7</sup> Any person—a landlord, a neighbor, an employer, or even a stranger—could involve the police, making it so that “all sex acts between men were . . . illegal, [and] gay men were forced to become sexual outlaws.”<sup>8</sup>

Once the Consenting Adult Sex Bill decriminalized sodomy in California in 1976, the baths increasingly functioned as cultural centers “that could both shape and respond to the rapid social, sexual, and political changes that were taking place” by providing gay men an opportunity to specifically interact with other gay men.<sup>9</sup> Although men could no longer be prosecuted, they still faced harassment by police given that the privacy afforded by the baths was disputed. It was not until 1978 that the San Francisco District Attorney finally emphasized, “There’s no question this (bathhouse) was a private place,” in response to a raid at the Liberty Baths involving three arrests. However, bathhouses would soon face a new form of regulation.

### **The Battle Over the “Gay Bathhouse” Experience**

Despite police mistreatment, bathhouses endured and grew as cultural centers for San Francisco’s gay community until 1984. However, on March 27, at a meeting of the Harvey Milk Democratic Club, Larry Littlejohn, founder of the homophile organization Society for Individual Rights, introduced a municipal ballot initiative that aimed to close down the baths as a response to the raging AIDS epidemic.<sup>10</sup> Larry was a sex venue owner himself, yet he endorsed the initiative, which held particular weight in the community.

The following morning, a local gay newspaper published an article titled “Pride Founder Will Circulate Stop Sex Petition for Ballot,” spreading panic and forcing city officials and community members to formulate a public response to the proposed closures.<sup>11</sup> This editorial sparked community outrage, including a *Letters to the Editor* section spanning over three pages. Many in the community resisted the initiative and particularly singled out Littlejohn as “Little Brain,” “Judas Little John,” and “the hemorrhoid on the asshole of the gay community”—with the final comment coming from the owner of another prominent San Francisco bathhouse.<sup>12</sup>

Before this initiative qualified for the November ballot, Dr. Mervyn Silverman, head of San Francisco’s Department of Public Health (SFDPH), held a press conference asserting that the Department would not close the baths, despite political pressure from Mayor Dianne Feinstein.<sup>13</sup> The conference attracted many protestors, including men in towels shouting, “Out of the tubs, and into the streets” and “Today the tubs, tomorrow your bedroom.” These protestors highlighted a legitimate fear of gay criminalization and government intrusion into their private

conduct, especially given the years of police mistreatment many had endured.<sup>14</sup> Meanwhile, despite this public promise from Silverman, Mayor Feinstein surreptitiously ordered San Francisco police officers to begin surveilling bathhouses to report on the sexual activity of gay men.<sup>15</sup> By September 1984, the public became aware of Mayor Feinstein's spies, which sparked outrage and shattered any lingering trust of government and police.

Feinstein's actions can be placed in a broader context of fear of the spread of HIV in the mid-1980s. In June of 1984, San Francisco reported 550 AIDS cases and 213 deaths. The CDC had little to offer, and President Reagan did not publicly mention AIDS until September 1985. This lack of leadership at the federal level resulted in state and local organizations being left on their own to formulate strategy. Unfortunately, and as Feinstein's spy tactic makes clear, in many cases this simply meant articulating fear at the local level by targeting spaces associated with gay sexuality.

The spy controversy inspired significant advocacy, including an independent review of bathhouse safety procedures by local newspaper *Coming Up!* and a statement from the San Francisco Human Rights Commission condemning the closures. HRC exclaimed that "health professionals cite types of behavior and not location in the transmission of AIDS," and the *Coming UP!* investigations normalized health guidelines prescribed by the San Francisco AIDS Foundation (namely minimum lighting requirements, prominent prevention literature, and PA system announcements promoting safer sex).<sup>16</sup> The baths were a hub for outreach and education, especially for underserved communities, including closeted men who were otherwise disconnected from gay culture. However, Feinstein, at the direction of the City Attorney, continued to sanction further surveillance, this time hiring a private firm to report back on observed conduct.

While Silverman initially opposed Feinstein's spies, he was shocked when city investigators reported the types of sexual activity that were taking place at the baths. One reporter noted that "Silverman had no doubt of what course of action he would take, since just about every type of unsafe sex imaginable, and many variations that were unimaginable, were being practiced with carefree abandon."<sup>17</sup> Shortly thereafter, Silverman ordered the closure of the baths and several other establishments where gay men partook in sex and reviewed them by name, stating, "these fourteen establishments are not fostering gay liberation. They are fostering disease and death."<sup>18</sup>

Unsurprisingly, Silverman's orders were initially ignored, prompting the city attorney to file a complaint with the California Superior Court, requesting a temporary restraining order against the 14 venues that was supported by 85 pages of the second surveillance report (Feinstein's surveillance report was never made public). Judge William Mullins granted this request and decided to enjoin the bathhouses; on October 15, 1984, he issued an order closing nine venues for 15 days, exempting the adult bookstores and theatres on free speech grounds. In responses, many leading organizations released statements asserting that there was "no correlation between the risk of acquiring the disease and bathhouses" and insisting that closing them "sends out the wrong message that government has finally done something effective and conclusive [when] . . . it has not." However, these complaints were ignored.

On November 28, a subsequent preliminary ruling functionally closed all venues operating as bathhouses. While the judge's final decision never outright banned bathhouse venues, it instead prohibited the key feature of private rooms with locking doors and additionally added monitoring requirements for safe sex. The injunction specified that it was to remain in effect until the SFDPH Director "declare[s] the AIDS epidemic to be terminated."<sup>19</sup>

It is important to highlight that these venues were functionally closed as a result of judicial ruling. A heterosexual judge with no gay advisory committee determined what was an acceptable venue for men who have sex with men. The decision did not reflect the expertise of health care providers, specialists, or doctors, nor did it create public policy or legislation. At first, this ruling only enjoined specific venues; however, in December 1984, the injunction was modified to grant the Director of Public Health power to define the term *unsafe sex*. In 1989, the City dismissed the lawsuit against the majority of defendants, vacating the court order prohibiting private rooms.<sup>20</sup> However, in 1997, the SFDPH codified the same locked door and monitoring requirements, published in a set of minimum standards applicable to all baths, which remained in force until 2020.<sup>21</sup>

### **Current Legislation and Modern Safer Sex Practices**

Since this ruling, there have been several efforts to re-open the bathhouses; however, the movement to "reopen the baths" has to some degree been based on a misunderstanding or oversimplification of the actual legal issue, since bathhouses were never prohibited, only private rooms. Even when activists have correctly made this distinction, San Francisco's political and health leadership has largely refused to entertain a dialogue with community activists because HIV infection rates in the city remained high.<sup>22</sup> In particular in 1996, Mayor Brown and the SFDPH opposed legislation sponsored by Supervisor Ammiano to "re-open" and regulate the baths due to the high infection rates.<sup>23</sup>

However, city inaction continued even as infection rates fell, despite San Francisco "[leading] the way in setting standards for prevention, care, and treatment recognized around the world."<sup>24</sup> Multiple studies around PrEP, a daily HIV preventative pill, took place in San Francisco, and in 2014, the "Getting to Zero" program—a city-wide consortium focused on getting to zero HIV infections, zero HIV-related deaths, and zero HIV stigma and discrimination—effectuated PrEP expansion, access to free testing, and outreach that promulgated understanding of the message: "Undetectable = Untransmittable" (U=U).<sup>25</sup> (U=U means that an HIV-positive person with an undetectable viral load cannot transmit the virus.) The program's goals of reducing San Francisco's infection rate to zero has seen significant success, with only 166 new HIV diagnoses being reported in the city in 2019.<sup>26</sup>

With decreasing numbers have come more vocal community enthusiasm to remove the restrictions, bolstered by activists such as Blade Bannon, Race Bannon, and myself. This enthusiasm ultimately emboldened District 8 Supervisor Raphael Mandelman to submit an initiative to the Board of Supervisors on February 11, 2019, to remove the locked door and monitoring requirements.<sup>27</sup>

When Supervisor Mandelman assumed office in 2018, it quickly became clear to him that the existing restrictions no longer made sense. His focus on modern HIV prevention, married with the rising success of the ‘Getting to Zero’ initiative, opened the door for conversations between community activists, city supervisors, and the city health department. As Mandelman has noted, “[T]hese regulations have long outlived any usefulness they may have had.”<sup>28</sup> Given that other bathhouses located in nearby cities, such as Steamworks Berkeley and the San Jose WaterGarden, have remained open all along, they present comparison points and have provided no evidence to suggest there is a greater risk for HIV infection at public sex venues than other locations. With a better understanding of HIV, fear-driven logic became scientifically ineffective despite its lasting trauma on the city. As activist Michael Petrelis notes, “gay men . . . naively believed *where* we engaged in sex was a risk associated with AIDS,” then specified that “there is no scientific evidence proving bathhouses, or sex clubs, are more responsible than hotel rooms or bedrooms for gays contracting AIDS.”<sup>29</sup> Initially, locked doors were prohibited to monitor safer sex, namely observable use of condoms, but the advent of PrEP and U=U have made it impossible for “safer” sex to be monitored or observed, for these preventative measures frequently occur off site.

In 2019, Supervisor Mandelman, with the support of District 6 Aide Honey Mahogany, City College Board Member Tom Temprano, and representatives from the SF Public Health Department, organized private meetings with key stakeholders of San Francisco’s adult sex venue to determine the best course of action. At these meetings, the DPH and stakeholders discussed key issues not only in relation to sex at baths, but also sex at various venues, including bars, clubs, and private events. They acknowledged that the baths have provided a safer and private place for all gay men to congregate without fear of violence or heteronormative social consequences and that, in particular, baths provide access to queer spaces to young men between the ages of 18 and 20 who are prohibited from entering bars and clubs. As Mandelman explains, “[B]y creating spaces where people can have sex, you create spaces for education and testing [ . . . ] meeting in a community place where there is education around PrEP and safer sex is a form of harm reduction.”<sup>30</sup>

Initially these talks were meant to formalize a new regulatory framework for bathhouses; however, fearing that an overly complicated regulatory structure would add additional barriers to the baths, this idea was scrapped. Instead, in February 2019, Supervisor Mandelman introduced an ordinance that would direct the SFDPH to revisit the minimum standards and prohibit them from requiring monitoring, regulating door size, and prohibiting locks.<sup>31</sup> He argued that:

[O]ur current regulations for adult sex venues were put in place as an emergency measure at the height of the AIDs crisis when San Francisco was desperate to slow the spread of HIV/AIDS [ . . . ] including a ban on private rooms and required monitoring of patrons’ sexual activity have no public health rationale and need to be changed.<sup>32</sup>

After hearing public comment from the community, the board of supervisors voted unanimously in favor, leaving the final decision to Mayor London Breed, who signed the ordinance on July 31, 2020. The ordinance has drawn some pushback with some believing it irresponsible to legalize a bathhouse during the current COVID-19 pandemic. However, Mandelman has

responded to these assertions that “we’re not shutting down schools and restaurants, and opening bathhouses [. . .] we’re legalizing them to be able to open when it is safe.”<sup>33</sup>

Although San Francisco is a progressive leader in the fight against HIV, the persistence of these regulations even beyond advances in contemporary scientific understandings of HIV transmission exemplify how long fear-based regulations can last. More straightforwardly, this serves as a reminder that as our understanding of the virus shift, policies do not automatically update; rather, it usually requires a concerted effort from community advocates to see these changes made. While bathhouses will remain closed until COVID vaccines become widely available, the issue allows us to examine how we can be using queer spaces differently.

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<sup>1</sup> Matthew Bajko, “SF Tells Gay Bathhouses, ‘Welcome Back!’”, *Bay Area Reporter*, 25 January 2021, <https://www.ebar.com/news/news//301403>.

<sup>2</sup> San Francisco Ordinance NO. 127-20, <https://sfbos.org/sites/default/files/o0127-20.pdf>.

<sup>3</sup> Allan Bérubé, “The History of Gay Bathhouses,” *Journal of Homosexuality* (2003): 36, [https://www.tandfonline.com/doi/abs/10.1300/J082v44n03\\_03](https://www.tandfonline.com/doi/abs/10.1300/J082v44n03_03).

<sup>4</sup> Bérubé, “History,” 38.

<sup>5</sup> Bérubé, “History,” 40.

<sup>6</sup> Bérubé, “History,” 34.

<sup>7</sup> Bérubé, “History,” 34.

<sup>8</sup> Bérubé, “History,” 34.

<sup>9</sup> Bérubé, “History,” 39.

<sup>10</sup> Buzz Bense, “LDG: Sex Panic – The Real History Behind the SF Bathhouse Closures”, 27 May 2015, [https://www.youtube.com/watch?v=WGfbJbruR\\_Y&has\\_verified=1](https://www.youtube.com/watch?v=WGfbJbruR_Y&has_verified=1).

<sup>11</sup> Bense, “LDG.”

<sup>12</sup> Bense, “LDG.”

<sup>13</sup> “14 San Francisco Sex Clubs Told to Close to Curb AIDS”, *New York Times*, 10 October 1984, <https://www.nytimes.com/1984/10/10/us/14-san-francisco-sex-clubs-told-to-close-to-curb-aids.html>.

<sup>14</sup> Bense, “LDG.”

<sup>15</sup> Bense, “LDG.”

<sup>16</sup> Bense, “LDG.”

<sup>17</sup> Diane Binson and William Woods, *Gay Bathhouses and Public Health Policy* (London: Routledge, 2013): 106.

<sup>18</sup> Press Statement of Dr. Meryn Silverman; October 9, 1984

<sup>19</sup> SF Ordinance No. 127-20.

<sup>20</sup> SF Ordinance No. 127-20.

<sup>21</sup> SF Ordinance No. 127-20.

<sup>22</sup> Supervisor Raphael Mandelman, interview with the author, 16 January 2021.

<sup>23</sup> Ann Rostow, “Mayor Brown Will Not Back Sex Club Ordinance,” *Bay Area Times*, 14 November 1997: 10.

<sup>24</sup> “About HIV and SF,” Getting to Zero San Francisco, <https://www.gettingtozerosf.org/about/>.

<sup>25</sup> Susan Buchbinder, “Getting to Zero San Francisco: A Collective Impact Approach,” *Journal of Acquired Immune Deficiency Syndromes* 82 (2019),

[https://journals.lww.com/jaids/fulltext/2019/12003/getting\\_to\\_zero\\_san\\_francisco\\_\\_a\\_collective\\_impact.3.aspx](https://journals.lww.com/jaids/fulltext/2019/12003/getting_to_zero_san_francisco__a_collective_impact.3.aspx).

<sup>26</sup> “About HIV and SF.”

<sup>27</sup> “Supervisor Mandelman Introduces Ordinance That Could Bring Gay Bathhouse Culture Back to SF,” *Bay Area Reporter*, 27 February 2020, <http://sfbaytimes.com/supervisor-mandelman-introduces-ordinance-bring-gay-bathhouse-culture-back-sf/>.

<sup>28</sup> Ryan Kosty, “Bathhouse ban revoked: Amid on pandemic, SF confronts legacy of another,” *San Francisco Chronicle*, 12 September 2020, <https://www.sfchronicle.com/bayarea/article/Bathhouse-ban-revoked-Amid-one-pandemic-San-15558609.php>.

<sup>29</sup> Michael Petrelis, “Kill the Legislation – Not Gay Sexuality” 12 November 1996.

<sup>30</sup> Mandelman interview.

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<sup>31</sup> SF Ordinance NO. 127-20.

<sup>32</sup> Jay Barmann, “Supervisor Propose Re-Legalizing Gay Bathhouses in SF”, *SFist*, 14 February 2020, <https://sfist.com/2020/02/14/supervisor-mandelman-gay-bathhouse-legislation/>.

<sup>33</sup> Mandelman interview.