

## Bathroom regulation a 'nightmare'

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### Document Text

Trying to regulate San Diego's four remaining gay bathhouses has become "a procedural nightmare," ironically complicated by a new state law designed to make it easier to close bathhouses that don't act to stop the spread of the AIDS virus, according to a deputy city attorney.

Joe Schilling, coordinator of the San Diego city attorney's bathhouse-litigation team, said attorneys for four bathhouses here last month filed further legal arguments to keep the businesses unregulated and open.

"They're claiming that (the new) state legislation pre-empted -- and therefore declared invalid -- our local legislation," Schilling said.

Last spring the San Diego City Council passed an ordinance designed to prevent sexual activity that spreads the acquired immune deficiency syndrome virus in bathhouses. The city law set up stringent occupancy and building standards and prohibited oral, anal and vaginal intercourse in bathhouses.

A month earlier, the county Board of Supervisors passed a similar ordinance.

Local officials had their doubts that the ordinances would be enforceable, because bathhouses themselves are not a public health hazard. The risk comes from the kinds of sexual activity that may occur there, but that's harder to prove, county health officials maintain.

To overcome the problem, the Legislature last year passed a new law, drafted by Assemblyman Bill Bradley, R-San Marcos, which classifies as a public nuisance any bathhouse that "encourages or permits conduct that ... can transmit AIDS, including but not limited to anal intercourse, oral copulation or vaginal intercourse." Heterosexual, as well as homosexual, bathhouses are included in the law.

The law, which goes into effect today, was designed to give cities and counties the legal language they need to close bathhouses and successfully fight legal challenges from bathhouse owners. Bradley does not believe his bill pre-empts local legislation.

Although one bathhouse closed voluntarily last year, four other establishments that opted to fight the city in court have argued the ordinance amounts to an attempt to deny a social group the constitutional right to free assembly.

When a judge denied the city's attempt to block that challenge, the city then filed another complaint against the bathhouses, saying they were not complying with the city ordinance. The bathhouses then challenged the city's right to proceed, saying that the Bradley law pre-empts local bathhouse legislation.

That challenge will be heard in Superior Court on Jan. 26.

"They're fighting us with every legal maneuver," Schilling said. "Every one we do, they counter with another."

"There's even speculation that we may have to devote the energies of a deputy city attorney full-time just to coordinate the bathhouse enforcement. It's becoming so complex."

Tom Homann, attorney for the bathhouses, did not return phone calls seeking comment. Another attorney retained by the bathhouses, Michael Crowley, referred inquiries to Homann. They represent Mustang Club, Club San Diego, Dave's Club and the Vulcan Steam & Sauna.

Unregulated operation by the bathhouses "serves as a source of great frustration" to Dr. J. William Cox, county health director.

"It's always amazing to me that we have the authority to close a beach with sewage or a motel if it's got an air conditioner that has organisms spreading like Legionnaire's disease. But the frustration here is that ... we are not able to say this is a health menace and shut (bathhouses) down."

Schilling said that part of the city's lack of success in the courtroom has been the weight of evidence it has submitted. Information gathered by undercover teams sent in to observe bathhouse activity has been limited by an inability to see what is occurring between occupants behind closed doors. The city ordinance requires openings in walls and doors. Undercover inspections have found few changes in the premises.

"We do not have the documentation about the activities that are going on inside," Schilling said. "At this point (what we have is) more than speculation, but not sufficient evidence to go into court. We just know they're operating without the proper permit and licensing."

Cox said county and city attorneys have advised him that the Bradley statute "may be a little vague and difficult to invoke. I'm not all that confident it will give us advantage in enforcing the ordinance."

Schilling added that if the city decides to use the Bradley bill, it will have to conduct a new undercover investigation inside the baths to gain more evidence. "And even when we do file new legal action under the Bradley bill, I'm sure the bathhouse owners will challenge that as well," he said.

Tom Wimbish, operator of the Mustang Club, said last week the bathhouse regularly provides customers with AIDS-prevention information, which they would not get outside a bathhouse setting.

All his customers are practicing safe sex, he added. However, Wimbish said he continues to see customers come into the bathhouse who don't know anything about protecting themselves from AIDS, and need education.

"It's frightening," he said. "I've even talked to people who think it's just a propaganda against gay people and really doesn't exist."

San Francisco's attempts to shut down bathhouses through court action have failed, Cox noted. The businesses there have closed, nevertheless, because patrons "voted with their feet" and stopped using them.

In Los Angeles last August, county attorneys were granted a preliminary injunction against a Silver Lake district bathhouse that "knowingly facilitated and allowed" high-risk sexual activity in violation of county regulations designed to stop the spread of AIDS.

Los Angeles deputy county counsel Steve Carnevale said evidence gathered by private investigators made the difference this time, whereas an attempt two years ago to use undercover Sheriff's Department investigators failed to

amass evidence acceptable to the court.

"The first time, we found one or two instances of sexual activity, but they weren't all that clear. You could hear sounds behind partitions, but it was more conjecture. This time, we found it right in the open, in full view," Carnevale said.

"The Sheriff's Department didn't have their heart in it," he said, but the private investigators "did a thorough job, finding dramatic evidence of sex occurring. Like an orgy."

Carnevale said the investigators found "people weren't confined in private rooms -- they were engaging in anal intercourse, and they weren't using condoms. We were really kind of surprised that we'd get evidence that good."

He emphasized that sexual activity can still occur in a Los Angeles County homosexual bathhouse as long as it does not involve anal or oral intercourse. "This is a health regulation, not a moral one," he said.

Cox refused to describe the health department's undercover effort in San Diego because it would "compromise the evidence being collected."

Schilling said that both the Sheriff's Department and private investigators would be used in future bathhouse investigations.

Credit: Staff Writer

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#### **Abstract** (Document Summary)

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