

## Bathhouses flaunt city ordinance

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### Document Text

Nearly 10 months after the city adopted an ordinance regulating gay bathhouses, it's business as usual in San Diego's four remaining bathhouses. Customers still receive free condoms, view sexually explicit films, bathe in jacuzzis and retreat to private cubicles.

Prosecutors say the establishments are violating the ordinance, but owners refuse to comply with a law that they argue is unconstitutional.

It is anyone's guess when, if ever, the city will be able to enforce the regulations.

Hours after the ordinance became law last May 4, club owners filed suit to block enforcement of its ban of specific, unsafe sexual practices and occupancy of the cubicles by more than one person. A month later, the owners won the right to a Superior Court hearing after claiming that the law violates constitutional rights to free association, privacy and equal protection.

City prosecutors and attorneys for bathhouse owners have argued their positions in court documents and are waiting for a judge to hear oral arguments on the constitutional issues. But it could be months before there is a decision because of the pending arguments and the Superior Court's temporary halt to civil trials due to its overloaded criminal calendars.

Besides banning risky sexual practices, the city's ordinance established strict occupancy, lighting and structural standards and required annual operating permits. The interior changes have not been made, according to city and county inspectors, and no owner has obtained the annual permit.

Even before the ordinance was passed, club owners said business was down, partly because of the threat of AIDS. One downtown club closed in June, although operators blamed its closure, not on the new regulations, but on high crime, problems associated with the homeless and drug dealing.

Owners would not discuss their operations, referring questions to their attorneys, Thomas Homann and Michael Crowley.

Neither attorney would say whether business is off at the four clubs -- Club Mustang, Club San Diego, Dave's Club and Vulcan Steam & Bath. "That would not be good lawyering," Homann said.

Said Crowley: "They are continuing to provide educational services, free condoms, and people from the AIDS projects come in on a weekly basis to give seminars on safe sex."

After the bathhouse owners filed their suit, the city countered with a cross complaint alleging that the clubs "promote multiple unsafe sexual contacts between homosexual males. ... Their principal attraction lies in how many sexual

contacts are available to a patron -- thus these establishments, by facilitating multiple sexual contacts, significantly increase the risk of exposure to AIDS."

Bathhouse attorneys replied in legal briefs: "There is no evidence the operations of gay bathhouses have caused the spread of the HIV virus or contributed to the spread of AIDS."

The legal maneuvering was further complicated when club owners filed a lawsuit claiming that state legislation regulating bathhouses pre-empted and thus invalidated the local law. That argument was rejected last month by Superior Court Judge Kevin Midlam, clearing the way for the hearing on the constitutional issues.

Although the city contends the clubs are violating the bathhouse ordinance, prosecutors acknowledge that there isn't enough evidence to show the clubs are a public nuisance. For the city to close the bathhouses, as some have advocated, it would have to provide such evidence.

Investigators have visited the clubs but were unable to see what was occurring behind closed doors.

"They are operating without a permit in violation of the local regulation," said Joe Schilling, the assistant city attorney overseeing the city lawsuit and criminal prosecution of the bathhouses. "Of the documentation we've seen, there really isn't sufficient evidence to shut them down as a public nuisance."

The ordinance requires openings in walls and doors. Schilling said city officials hope the structural changes will "deter the more risky sexual activity from happening because it would be out in the open instead of behind closed doors."

Credit: Tribune Staff Writer

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

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