

Legal red tape snarls action on gay bathhouses

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San Diego's four remaining gay bathhouses have "essentially done nothing" to comply with either the city or the county's new AIDS prevention ordinances, according to county health director Dr. J. William Cox.

But because of a tangle of legal motions and complaints filed in recent weeks by attorneys for the city and for the bathhouses, the city has not yet filed charges to shut down the bathhouses.

County health officials in June obtained court warrants to inspect the four bathhouses after twice being refused entry last spring by bathhouse owners and their attorneys, Cox said.

Health inspectors finally gained entrance in mid-June, said deputy city attorney Joe Schilling.

The inspections took place in the morning, at a time when no bathhouse patrons were present. Numerous structural violations of the ordinance's provisions, such as lighting requirements, were noted, Schilling and Cox said.

But Schilling said the city's attorneys cannot enforce the ordinance until a legal challenge is rejected by the court, Schilling said.

In mid-April, attorneys for the four bathhouses filed a complaint for injunctive relief, essentially challenging the constitutionality of the city's ordinance. The attorneys said the city's ordinance inhibits the "constitutional right to free association for social, recreational and political purposes...."

To argue against that constitutional challenge in the hopes of getting it barred from consideration by the court, city attorneys last month filed an objection, contending that the challenge was not specific enough.

Deputy city attorney Jim Bivins said that the bathhouse challenge failed to explain how the imposition of structural standards such as brighter lighting -- intended to discourage sexual activities -- resulted in restricting the constitutional right of gay bathhouse patrons to free assembly.

"They alleged no facts as to how enforcement of the ordinance would harm (the bathhouse patrons)," Bivins said. "They have not made a connection between enforcement of the ordinance and how they will be harmed by the enforcement."

Attorney Michael Crowley, who represents the bathhouses, said that the constitutional challenge was sufficiently specific, and said that either this court or an appellate court will agree. "The city's regulation is not intended to regulate bathhouses. It's intended to shut them down," he said.

Crowley added that the city "is hiding behind a technicality."

On June 20, Superior Court Judge James R. Milliken agreed that the attorneys had not been specific enough in their constitutional challenge, but gave them an opportunity to amend the complaint.

Crowley and the other bathhouse attorney, Tom Homann, did so. And again, Bivins said, they weren't specific enough. The city filed a second objection to the constitutional challenge Wednesday, basically repeating the same argument, Bivins said.

The Superior Court is expected to rule on the matter Aug. 19.

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Abstract (Document Summary)

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