

BDSM Venues and Legal Status

Written by: Ali
Edges S&M Leather Bondage Private Club, Adult Education and Sales
Gregg & Rhonda
smOdyssey, Inc.

April 25, 2007

This article is about the challenges facing establishments offering BDSM and other forms of consensual adult activity, particularly as this relates to our local community. This is an area of concern that many in the BDSM scene like to talk about at length, but few really understand. We hear terms like “flying above (or below) radar”, “legal status” and “proper permits”. It is easy for us to become confused about what is legal and what is not.

First and foremost, understand that we are dealing with multiple levels of law. Many of our activities are governed to some extent by criminal law, while other activities fall into the areas of zoning and licensing. All of the above are further influenced to some degree by our First Amendment rights to freedom of expression.

This topic is particularly difficult to define because criminal laws vary from state to state. Also zoning and licensing regulations vary from city to city and county to county within the same state. Still further complicating things is the reality that certain zoning and licensing requirements may be selectively, or even arbitrarily enforced by individual local officials, often with little in the way of practical recourse. For purposes of this article we are focusing solely on the zoning and licensing aspects of the issue. The criminal law aspect is a much bigger subject that has been addressed in many places but needs to remain in the back of our minds when we make decisions about our play.

When we talk about being “legal” with respect to BDSM, we must understand that many of the things we practice are at best marginally legal, and in some states may be quite illegal. We also need to be aware that just because a bottom in a given scene is happy with the scene and swears to officialdom that the scene was consensual, does not mean that police cannot still arrest and a District Attorney cannot still charge and prosecute the top. In the bay area this type of prosecution is mercifully rare but that does mean it can not happen even here.

This situation can occur even in a private home. If a neighbor observes “something” through a window or hears “something” that he or she finds suspicious and decides to call the police, guess who’s coming to dinner? The net result is that there is no place we can do BDSM play without running some risk of having an unpleasant encounter with law enforcement. The risk may be greater or less depending on where we choose to play. Mitigating that risk through choice of venue is the subject of this article.

There are two approaches employed to dealing with officialdom. One approach is the so called “fly under radar approach”. Here the concept is to keep what you are doing shielded from the public eye. Generally play parties at private homes are adopting this strategy. The party in most cases will only be advertised by word of mouth and the parties host will generally want to meet all the guests prior to extending an invitation. Folks tend to choose homes for parties where it is less likely to disturb the neighbors and risk a complaint to the local Police.

This is not the tactic that most public venues use. Within smOdyssey for example, we believe in the opposite approach “flying above the radar”. In this approach local law enforcement, licensing, zoning and other cognizant public safety officials are contacted in advance and our intentions regarding our planned activities are openly discussed.

We enjoy this sort of relationship in both the City of San Jose through the past efforts of smOdyssey pioneers like Jerome, and in Santa Clara through the continuing efforts of folks like Ali at Edges.

Numerous issues crop up when you attempt to do BDSM parties in commercial spaces. Fire safety regulations, zoning restrictions, local laws on adult entertainment, business licensing requirements and use permits all come into play. A common misconception is that a space needs one specific license as a BDSM club. In fact, no such single license exists. Every business needs a local business license and most will need additional licenses and permits to cover various activities. The mere fact of, being issued a business license is not sufficient protection if the business has not been up front with local officials about the true nature of contemplated BDSM events.

By way of example, smOdyssey stages many of our events at the community space known as “Edges.” Edges; is owned by South Bay Productions and have several different licenses and permits. They have a basic Santa Clara City Business license to operate a member’s only club. They have additional permits for photography and video production, and they have another county required permit to offer non-accredited educational courses. Additionally they have special use permits to allow use of the facility for construction and or repair of what we would call play equipment.

In addition they had to pass through the scrutiny of both the local Zoning Department and the Fire Marshall. They are housed in a building zoned for industrial use, which in Santa Clara is the least restrictive zoning possible and the ideal location for an adult oriented Members Only BDSM club. They also routinely pass inspections by the Santa Clara City Fire Marshall.

Equally important to getting all of the above permits and licenses though was being upfront with the city and county officials issuing those permits. Recently, Edges ownership sat down with Police Department Officials in the City of Santa Clara and spoke to them more than frankly about the activities within their building. No additional permits or licenses were required for Edges. This is due to Edges’ excellent track record in their first year of operation along with their strict member’s only status and

membership policies. City officials even went as far as offering to add S/m club to the business license. It was later agreed that this would not be in the best interest of Edges as that information becomes much more “searchable” and could cause future problems for the business.

Both the Police Department and Fire Department are fully aware of the type of activity the space is used for. The good news here is that if for any reason fire, EMT or law enforcement had to come to the site their superiors would know in advance about the activities within Edges. This greatly reduces the likelihood of an officer deciding to issue citations or make arrests and leaving it to a judge to sort it out. In short a player is much less likely to have a bad experience with law enforcement at a well run “above radar” member’s club than at an “under radar” venue, that is relying on invisibility as their first and last line of defense.

Similarly when we stage large events like FolsomFringe we work with the hotel staff, local police and other interested parties to assure that to the greatest extent possible our events are properly permissible at the locations they are held.

None of this is a guarantee that Edges, smOdyssey or any other South Bay Leather Organization will always be welcome in Santa Clara County or City. Indeed no Dungeon space or leather event has such a guarantee in any county or city within the United States. Local standards of public “morality” can change at anytime and today’s cooperative public officials might be replaced with the next season’s elections by those opposed to sexual freedom.

smOdyssey and Edges are not activist groups. It is neither of our goals to create confrontation and then test our first amendment rights in court. Our goals are the same, to provide access to safe, sane, consensual; risk aware, BDSM/Leather oriented social and educational opportunities. We both work to be as open and transparent as possible with our local authorities and to be good neighbors in our communities. While we can never guarantee absolute safety in pursuing our BDSM interests we can and do offer the highest possible degree of safety to our respective memberships.

Many have expressed dismay about the inconvenience of having to go through an application and orientation process for becoming members of smOdyssey and/or Edges. These measures are necessary to distinguish our organizations from Adult Erotic Entertainment facilities that would not be nearly as welcome within the city limits of Santa Clara in the same way that we are at current. These measures also assure that a level of screening stands between sincere BDSM folks and those who are merely curious and/or potentially disruptive.

For further questions regarding the steps taken to ensure the safety of our members, feel free to contact ali@edges.biz or president@smodysey.com.