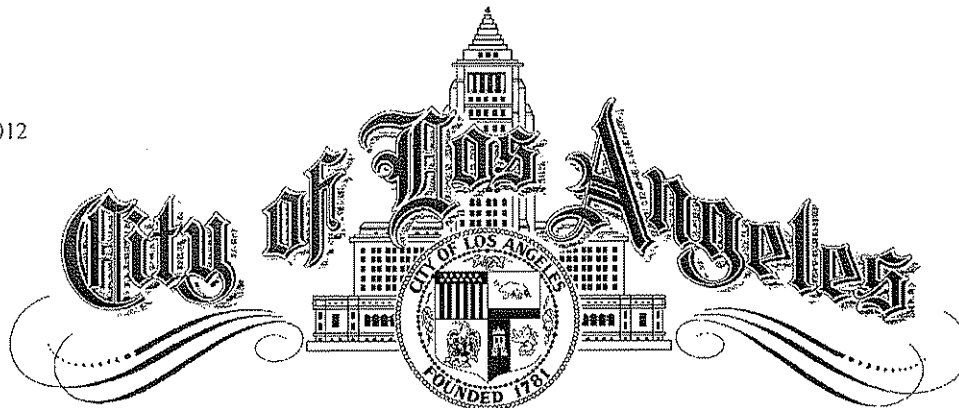


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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 3 - 0 1 6 3

JUN 1 0 2013

REPORT RE:

DRAFT ORDINANCE AMENDING SECTION 31.00 OF CHAPTER III OF THE LOS ANGELES MUNICIPAL CODE TO ADOPT THE LOS ANGELES COUNTY HEALTH REGULATIONS RELATING TO THE USE OF CONDOMS BY PERFORMERS WHEN FILMING A COMMERCIAL ADULT FILM, THUS AUTHORIZING COUNTY ENFORCEMENT OF THE HEALTH REGULATIONS WITHIN THE CITY, AND A DRAFT ORDINANCE FURTHER AMENDING SECTION 12.22.1 OF THE LOS ANGELES MUNICIPAL CODE TO REQUIRE THE USE OF CONDOMS WHEN FILMING AN ADULT FILM

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

On January 22, 2013, your Honorable Body requested that this Office: 1) draft an ordinance that would adopt Los Angeles County Code Section 11.39, which requires the producers of adult films to apply for, and obtain, a Los Angeles County health permit for use in the filming of adult films; and 2) prepare an ordinance that amends Los Angeles Municipal Code Section 12.22.1 to include the language and intent of County Measure B. Draft ordinances responsive to these requests were transmitted to the Clerk's Office on March 19, 2013.

On May 29, 2013, your Honorable Body requested that this Office further amend the draft ordinance to include language proposed by the CAO's Office, which would, in addition to complying with the language and intent of Measure B, discuss film permit language and the ability for the City to impose fees.

Pursuant to your request, this Office has prepared and now transmits for your consideration two draft ordinances. The first draft ordinance adopts Los Angeles County Code Section 11.39 as part of the City Municipal Code. The second draft ordinance amends Los Angeles Municipal Code Section 12.22.1 to include not only the language and intent of County Measure B, but the additional language prepared by the CAO's Office. (Council Motion, May 29, 2013, CF 12-1300-S1.) Both ordinances have been approved as to form and legality.

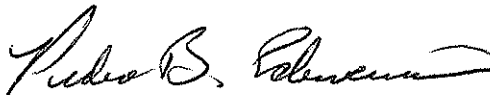
However, regarding the amendment to Section 12.22.1, this Office has concerns about the following language: "The City may charge, or may direct any other person or entity contracting with the City to administer the film permitting process to charge, entertainment industry customers seeking film permits for the production of adult films a fee sufficient to facilitate compliance with, and enforcement of, this section."

In order not to be viewed as a tax that must be approved by the voters, pursuant to California Constitution, Art XIII C, Section 1, any fees that would be collected must be based on the City's actual costs of regulation or for services provided. This Office is unaware what costs the City would incur since, at least presently, the enforcement mechanism would be the Los Angeles County Department of Public Health enforcing County health permits. For that reason, we have added to the proposed language the following sentence, which would remove any concern about possible facial invalidity: "All such fees shall be submitted to the City Council for its consideration and approval."

If you have any questions regarding this matter, please contact Deputy City Attorney Kimberly Miera at (213) 978-8169. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 
PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:KM:fc
Transmittal

ORDINANCE NO. _____

An ordinance amending Section 12.22.1 of the Los Angeles Municipal Code regarding the City of Los Angeles Safer Sex in the Adult Film Industry Act.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 12.22.1 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

SEC. 12.22.1. CITY OF LOS ANGELES SAFER FILMING ORDINANCE

(A) **Short Title.** This ordinance shall be known as the City of Los Angeles Safer Sex in the Adult Film Industry Act.

(B) **Use of Condoms in the Making of Films Involving Exposure to Blood Borne Pathogens.**

(1) For purposes of this section, an "Adult Film" is defined as any film, video, multimedia or other representation made for commercial purposes of sexual intercourse in which performers actually engage in oral, vaginal, or anal penetration, including, but not limited to, penetration by a penis, finger, or inanimate object; oral contact with the anus or genitals of another performer; and/or any other sexual activity that may result in the transmission of blood and/or any other potentially infectious materials as defined in California Code of Regulations, Title 8, Section 5193(b).

(2) For purposes of this Section, "Producer" is defined as any person or entity that produces, finances, or directs any Adult Film.

(3) For purposes of this Section, "Filmed" and "Filming" are defined as the recording of any Adult Film.

(4) No film permit shall be issued under the authority of the City of Los Angeles or the Los Angeles Police Department, pursuant to Section 12.22 A.13 of this Code or any other law authorizing the issuance of permits, for commercial filming for the production of any Adult Film unless the Producer of such film provides proof of a public health permit obtained pursuant to Title 11 of Los Angeles County Code, Sections 11.39.005, et seq.

(5) Any film permit issued under the authority of the City of Los Angeles or the Los Angeles Police Department, pursuant to Section 12.22 A.13 of this Code or any other law authorizing the issuance of permits, for commercial filming for the production of any film must expressly condition said permit on compliance with Subsection (4) of this section. Any such permit shall reference this section and contain the following language: "Permitee must abide by all

applicable workplace health and safety regulations, including California Code of Regulations Title 8, Section 5193, which mandates barrier protection, including condoms, to shield performers from contact with blood or other potentially infectious material during the production of films."

(6) The City may charge, or may direct any other person or entity contracting with the City to administer the film permitting process to charge, entertainment industry customers seeking film permits for the production of adult films a fee sufficient to facilitate compliance with, and enforcement of, this section. All such fees shall be submitted to the City Council for its consideration and approval.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By  _____
KIMBERLY D. MIERA
Deputy City Attorney

Date 6-10-13

File No. CF 12-1300-S1

ORDINANCE NO. _____

An ordinance amending Section 31.00 of Chapter III of the Los Angeles Municipal Code to adopt the Los Angeles County health regulations relating to the use of condoms by performers when filming a commercial adult film, as defined by Los Angeles Municipal Code section 12.22.1(B)(1), thus authorizing County enforcement of those health regulations within the City.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Subdivision 1 of Subsection (a) of Section 31.00 of Chapter III of the Los Angeles Municipal Code is amended to add Paragraph (F) to read as follows:

(F) The provisions of Chapter 11.39 of Title 11 of the Los Angeles County Code, as enacted and referenced in Los Angeles County Ordinance 2012-0058, effective November 18, 2012, as the referenced provisions of the Los Angeles County Code may be amended from time to time, fully express the will and intention of the Council of the City of Los Angeles as to those matters relating to public health that are contained therein, and are hereby adopted and are incorporated herein by reference.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
KIMBERLY MIERA
Deputy City Attorney

Date 6-10-13

File No. CF 12-1300-S1