

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: January 15, 2013

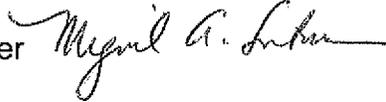
CAO File No. 0220-04709-0005

Council File No. 12-1300-S1

Council District: All

To: The Council  
The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Council Request (C.F. 12-1300-S1) to Convene a Working Group to Study Ordinance No. 181989, the City of Los Angeles Safer Sex in the Adult Film Industry Act

Subject: **ADDENDUM TO THE CAO REPORT DATED AUGUST 15, 2012 REGARDING THE IMPLEMENTATION OF THE SAFER SEX IN THE ADULT FILM INDUSTRY ORDINANCE**

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### SUMMARY

Measure B, the County of Los Angeles Safer Sex in the Adult Film Industry Act, was approved by voters on November 6, 2012. Due to the conflicting requirements and enforcement procedures included in the City and County Ordinances, the City has three choices about how to address the City and County regulations. One option would be to repeal City Ordinance No. 181989 and replace it with the County Ordinance, which would require a ballot measure and voter approval. The second possibility would be to adopt both the City and County Ordinances and resolve conflicts in enforcement as they arise. This Office recommends a third choice to amend City Ordinance No. 181989 to include the language and intent of County Measure B.

### BACKGROUND

In January 2012, Council (C.F. 12-1300-S1, Amending Motion 22-C) directed the City Administrative Officer (CAO) to convene a Working Group to study Ordinance No. 181989, the City of Los Angeles Safer Sex in the Adult Film Industry Act (Ordinance), to require condom usage in the Adult Film Industry and make recommendations regarding amendments to and implementation of the Ordinance. The CAO released a report regarding the Ordinance on August 15, 2012.

The recommendations in the CAO report were the result of the Working Group discussions. The first recommendation to revise the film permit application has already been implemented by FilmL.A., Inc. Recommendations two and four discussed the possibility of contracting for inspections of adult films and the development of a fee structure to pay for those services. The third recommendation addressed the possibility that County Measure B would be approved by voters.

## Measure B

Measure B added Chapter 11.39 to Division 1 of Title 11 of the Los Angeles County Municipal Code (LACC). The Measure requires producers of adult films to obtain a public health permit from the Los Angeles County Department of Public Health (Department) by filing an application form with the Department and by paying a fee. The Measure also states that the adult film production public health permit must be displayed at all times at the location where any adult film is filmed in an area that is visible to performers. In addition, a legible sign shall be posted that states that the use of condoms is required for anal or vaginal sex during the production of adult films. Furthermore, Measure B explains how compliance of the Ordinance will be carried out including inspections and administrative reviews, and how violations of the Ordinance will be enforced through the revocation of permits, fines, and/or imprisonment.

## FilmL.A.

The City entered into a contract with FilmL.A., Inc. in March 2010 (Contract No. C-117026) to provide film permit coordination for the City of Los Angeles, which includes the collection and remittance of City filming fees, notification of the community of upcoming filming activities, and the promotion of the City as a location for filming. FilmL.A., Inc. develops and maintains fee structures which eliminate costs to taxpayers. In addition, FilmL.A., Inc. does not receive any compensation from the City for the activities performed in the contract. The CAO is the City administrator for the FilmL.A. contract.

The City has complied with Ordinance No. 181989 by updating the language on film permits. First, in March 2012, the following language was added to all City film permits:

*Permittee agrees to comply with all applicable federal, state and local laws, regulations, ordinances and rules, including all applicable federal and state regulations for workplace safety and requirements for workers' compensation insurance for all persons operating under this permit as well as all applicable regulatory, environmental, safety and other standards of care in carrying out the activities that are subject of this permit (the "Permit Activities"), including Los Angeles Municipal Code Section 12.22.1. Vehicle Code provisions and/or posted regulations will be enforced unless specifically exempted by this permit.*

The City has also added a section to the Filming Activities list of the permit that includes "non-simulated sexual activity." If that section is selected by an applicant, indicating that non-simulated sexual activity would be filmed, then the following language is inserted into the Generic Conditions section on the actual permit:

*Permittee 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.*

## City and County Ordinances

An Initiative Petition entitled "Adult Film Industry; Use of Condoms; Film Permits; Initiative Ordinance" containing more than 70,000 signatures was filed with the Office of the City Clerk on December 5, 2011. The City Clerk verified that the appropriate number of signatures was valid and submitted the Certification of Sufficiency to the Council with three options for action. One of the choices included adopting the proposed Ordinance without alteration. The other two choices included different timetables for submitting the proposed Ordinance to a vote of the electors of the City. After a complaint was filed by the City Attorney as to whether or not the Initiative was preempted by state law, the parties subsequently entered into a Settlement Agreement in which the Council would adopt the proposed Ordinance in exchange for a dismissal of the declaratory relief action. The Council approved the Ordinance on January 10, 2012.

According to City Charter Section 464(a), Ordinances that come about through the Initiative Petition process can only be repealed by voters. The Charter Section states as follows:

*Any ordinance adopted by a vote of the electors of the City pursuant to an initiative petition cannot be amended or repealed, except by an ordinance proposed either by petition or by the Council at its own instance and adopted by a vote of the electors, or by an amendment of the Charter superseding the ordinance.*

The next Citywide general election is scheduled for May 21, 2013. Language to repeal the City Ordinance and replace it with the County Ordinance would need to be adopted by Council and the Mayor no later than January 30, 2013 to be eligible to be placed on the May 2013 ballot.

While Section 6 of Ordinance No. 181989 states that the Ordinance, "may be amended to further its purposes by ordinance passed by a majority of the Council and approved by the Mayor," the City Attorney advised that substantial changes made in furtherance of the Ordinance require a vote of the electorate.

In addition, the CAO received a letter dated January 15, 2013 from the proponents of the Initiative Petition entitled "Adult Film Industry; Use of Condoms; Film Permits; Initiative Ordinance" and Michael Weinstein, President of AIDS Healthcare Foundation, requesting Council to take immediate action to adopt LACC Chapter 11.39 and to amend the Los Angeles City Municipal Code (LAMC) Section 12.22.1 to provide that adult film producers who apply for film permits for the production of adult films in the City of Los Angeles provide proof of a valid health permit issues by the County. A copy of the letter is attached.

Given the conflicts inherent in trying to enforce the similar but not identical regulations in the City and County Ordinances, the Council can choose to repeal and replace the City Ordinance with the County Ordinance through the ballot process. The Council can choose to implement and administer both Ordinances, which has the potential to create legal risks for the City. The City Attorney states that there is no legal bar to the Council adopting Measure B while Ordinance No. 181989 is in effect.

## RECOMMENDATIONS

That the Council and Mayor:

1. Concur with the current direction to update City film permits to comply with City Ordinance No. 181989 including the mandate to use barrier protection, including the use of condoms, during the production of films that include non-simulated sexual activity;
2. A. Request the City Attorney to prepare an Ordinance that amends City Ordinance No. 181989 to include the language and intent of County Measure B, which may include amending the City's Public Health Code in the Los Angeles Municipal Code or adopting the language in County Measure B with additions and exclusions necessary to implement the intent of Measure B in the City; or  
  
B. Request the City Attorney to prepare the language for an Ordinance to be placed on the May 21, 2013 City ballot to repeal City Ordinance No. 181989, the City of Los Angeles Safer Sex in the Adult Film Industry Act, and replace it with an Ordinance that adopts the provisions the voters passed in Measure B, the County of Los Angeles Safer Sex in the Adult Film Industry Act; and present the proposed Ordinance to Council for adoption on or before January 30, 2013;
3. Adopt Chapter 11.39, Title 11, Health and Safety, of the Los Angeles County Code, known as the Safer Sex in the Adult Film Industry Act;
4. Direct the City Administrative Officer (CAO) to report back to the Mayor and Council with an explanation of how violations of City film permits are enforced and with recommendations to ensure that adult films are included in the City's film permit enforcement policies;
5. Direct the CAO to request FilmL.A. to notify production companies in their database of the changes included in these recommendations; and,
6. Receive and file the August 15, 2012 report from the City Administrative Officer regarding the implementation of the Safer Sex in the Adult Film Industry Ordinance (CAO File No. 0220-04709-0002).

## FISCAL IMPACT STATEMENT

There is no impact to the General Fund. Approval of the recommendations in this report will result in the preparation of an Ordinance to be presented to Council and the Mayor to amend City Ordinance No. 181989 and a report that describes the City's film permit enforcement process with recommendations to include adult films in that process.

*MAS:MMR:02130067C*

Attachment



January 15, 2013

Honorable Herb Wesson  
President, Los Angeles City Council  
City Hall  
200 North Spring Street, Room 430  
Los Angeles, CA 90012

Honorable Carmen Trutanich  
City Attorney  
City of Los Angeles  
Los Angeles City Attorney's Office  
200 North Main Street  
8th Floor  
Los Angeles, Ca. 90012

Miguel Santana  
City Administrative Officer  
City of Los Angeles  
200 N. Main Street, Room 1500  
City Hall East, Mail Stop 130  
Los Angeles, CA 90012-4190

**Re: Proposed Adoption of Los Angeles County Code Chapter 11.39 and  
Amendment of Los Angeles Municipal Code § 12.22.1**

Dear Mr. Wesson, Mr. Trutanich, and Mr. Santana:

I am writing on behalf of Gerard Kenslea, Marijane Jackson, Arlette de la Cruz, Mark Roy McGrath, and myself, the proponents ("Proponents") of the initiative measure that was officially entitled: "Adult Film Industry; Use of Condoms; Film Permits. Initiative Ordinance." As you know, our initiative petition was certified by the City Clerk on December 23, 2011, and adopted by the City Council as Ordinance 181989 and Section 12.22.1 of the Los Angeles Municipal Code ("LAMC") on January 17, 2012.

The Initiative Ordinance, in Section 6, stated that it "may be amended to further its purposes by ordinance passed by a majority vote of the Council and approved by the Mayor." (Ordinance 181989, § 6.) That language was specifically included by Proponents to provide the City with sufficient flexibility to enforce the Ordinance.

We understand that the City Council will be considering a proposal to adopt, in its entirety, Los Angeles County Code ("LACC") Chapter 11.39, which was enacted by the voters of the County of Los Angeles as Measure B in the November 2012 general election. In conjunction with its adoption of LACC Chapter 11.39, the City Council proposes to amend LAMC Section 12.22.1 to

provide that adult film producers who apply for film permits for the production of adult films in the City of Los Angeles provide proof of a valid health permit issued by the County pursuant to LACC Chapter 11.39 as a condition to obtaining such permit, and pay a fee sufficient to ensure compliance with this condition. We support this amendment and consider the amendment to both further the purposes of the Ordinance and protect the public health and safety of the residents of Los Angeles – which, after all, was the very purpose of our initiative.

We expect the City Council to take immediate action to adopt LACC Chapter 11.39 and to implement the amendment to LAMC Section 12.22.1 in the manner set forth above. It has been over a year since Ordinance 181989 was adopted by the City Council. The Proponents and the residents of the City of Los Angeles deserve and demand prompt enforcement of the law.

We look forward to your speedy action on this issue.

Very truly yours,



Michael Weinstein  
President, AIDS Healthcare Foundation

Enclosure