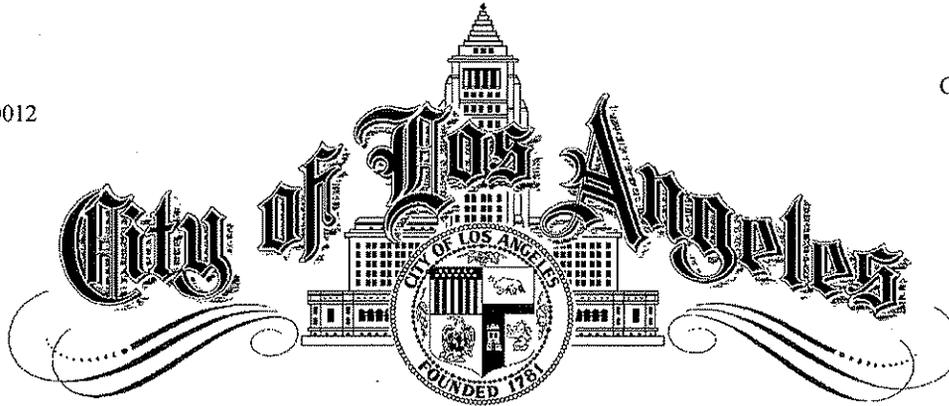


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**CARMEN A. TRUTANICH**  
City Attorney

**REPORT NO. R 1 2 - 0 0 0 6**  
JAN 0 '5 2012

**REPORT RE:**

**DRAFT ORDINANCES AND RESOLUTIONS PURSUANT TO CHARTER SECTION 452 REGARDING ACTION BY CITY COUNCIL ON CERTIFIED INITIATIVE PETITION**

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

Honorable Members:

The City Clerk has presented to your Honorable Body a certified initiative petition related to City film permit conditions for the production of adult films, including the required use of condoms in the making of such films. In connection with the City Clerk's transmittal, this Office has prepared and now transmits the attached draft ordinances and resolutions pursuant to Charter Section 452 regarding action by the City Council upon presentation of a certified initiative petition.

Background

On December 5, 2011, a group of proponents submitted an initiative petition to the City Clerk containing voter signatures in support of a proposed ordinance that would require City film permits for commercial production of adult films to be conditioned on certain workplace controls, including the required use of condoms. More specifically, the proposed ordinance would require any person who is issued a permit under the authority of the City for commercial filming of an adult film to provide and require use of condoms by employees and maintain other controls in the production of the film. The proposed ordinance also would require that any film permit issued under the authority of the City for commercial filming of an adult film be conditioned on this requirement and include language regarding the obligation to comply with applicable workplace health and safety regulations. The proposed ordinance also would require the City to charge

applicants seeking permits for production of adult films a fee sufficient to pay for periodic inspections.

On December 12, 2011, the City Clerk completed its preliminary review of the initiative petition and accepted it for processing. The City Clerk thereafter examined the voter signatures contained on the petition using the random sampling method authorized in the City Election Code and in accordance with Charter Section 451. The City Clerk has now completed that examination and has determined that the initiative petition contains a sufficient number of valid voter signatures to qualify for presentation to the City Council. The City Clerk certified the petition as sufficient on December 23, 2011 and presented the certified petition to Council on January 3, 2012.

#### Litigation Regarding the Proposed Initiative Ordinance

As this Office has reported previously, we believe that the regulation proposed in the initiative is not valid because state law exclusively governs employee workplace safety in this area and expressly preempts local governments from adopting and enforcing regulations on the transmission of blood borne pathogens in the workplace such as the required use of condoms by employees on adult film sets. On March 22, 2011, our Office issued a report regarding the regulation of workplace safety in the production of adult films through the City's film permit process. The report included a discussion of jurisdictional concerns in attempting to use the City's film permit process to require the use of condoms in the production of adult films and concluded that the City is preempted by state law from enforcing the use of condoms by employees on adult film sets. (See City Attorney Report R11-0120, CF 10-1926.) On December 2, 2011, our Office issued another report further detailing that the City is preempted under state law from enacting and enforcing workplace safety controls such as the use of condoms by employees on adult film sets. (See City Attorney Report R11-0406, CF 10-1926.)

On December 8, 2011, as soon as practicable after the initiative petition was submitted to the Clerk, our Office filed a complaint for declaratory relief asking the Los Angeles Superior Court to determine the validity of the proposed initiative ordinance considering state law preemption of local regulation in this area. Our complaint sought pre-election judicial review of this issue so as to avoid an unnecessary and costly election on an ordinance that is legally invalid. In doing so, we followed case law establishing that the appropriate course of action for a city faced with an invalid initiative petition is to seek declaratory relief from the courts prior to placing the measure on the ballot. (See *City of Riverside v. Stansbury* (2007) 155 Cal.App.4th 1582, 1590-1591; see also *Widders v. Furchtenicht* (2008) 167 Cal.App.4th 769, 777-779, 783; *Save Stanislaus Area Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th 141, 149.)

We also immediately sought and received an expedited hearing on the complaint. In the motion for an expedited hearing, we informed the Court that the City would incur costs of over \$4 million if it was required to place this measure on the ballot, and advanced compelling reasons why the Court should rule on the matter before the City is forced to incur those costs. The Court agreed to hear the matter on an expedited schedule and set the hearing for January 25, 2012.

The City filed its opening brief on December 23, 2011. A copy of the City's brief is attached and provides a detailed summary of why the proposed initiative ordinance is preempted under state law. (See Attachment 1.) Opposing briefs are due on January 13, 2012, and the City will have the opportunity to file a reply brief on January 20, 2012. The hearing is scheduled for January 25, 2012.

### Council Options

Charter Sections 450-452 provide that when a valid and certified initiative petition requesting adoption of a proposed ordinance is presented to the City Council, the City Council may:

- Adopt the proposed ordinance without alteration.
- Call a special stand-alone election, which must be held no earlier than 110 days but no later than 140 days after the Council acts, to submit the proposed ordinance to a vote of the electors of the City.
- Determine to submit the ordinance to a vote at the next election occurring more than 110 days from the date of Council action that is conducted in the territory of the City (placing the measure on the June 5, 2012 state primary election ballot would fall within this option).

Charter Section 452 provides that Council must take action within 20 days after the presentation of a valid certified petition.

Should the Council wish to adopt the proposed ordinance without alteration, we have attached the ordinance proposed in the initiative. (See Attachment 2.) We have not signed the ordinance as to form and legality because of the state law preemption issues stated above and in our papers filed with the Court on this matter. Should the Council wish to submit the proposed ordinance to the voters, we have attached an election ordinance and ballot resolutions to place the measure on the June 5, 2012 state primary election ballot. (See Attachment 3.)<sup>1</sup> These election documents include a

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<sup>1</sup> Please note that we have not transmitted documents for a special stand-alone election because the option of holding an election on the proposed ordinance can be accomplished by consolidating the election with the already-scheduled June 5, 2012 state primary election as noted in the City Clerk's report.

ballot title for the measure, which must be 75 words or less for the June 5, 2012 ballot.  
(See Cal. Elections Code §§ 9051, 13247.)

In light of what this Office believes to be the invalid nature of the initiative ordinance, as well as the pending litigation in the Superior Court, including the upcoming January 25 hearing, the City Council may wish to discuss these and other options on how to proceed with regard to the initiative. This discussion is appropriate for closed session.

If you have any questions regarding this matter, please contact Managing Assistant City Attorney Valerie Flores at (213) 978-8149. 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



WILLIAM W. CARTER  
Chief Deputy City Attorney

WWC:VF:ac  
Transmittal

**Attachment 1**

1 CARMEN A. TRUTANICH, Los Angeles City Attorney (SBN 86629)  
2 VALERIE L. FLORES, Managing Assistant City Attorney (SBN 138572)  
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9 Attorneys for Petitioner City of Los Angeles  
10 *Exempt from Filing Fee*  
11 *Pursuant to Government Code § 6103*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 CITY OF LOS ANGELES, a Municipal  
15 Corporation,

16 Plaintiff,

17 v.

18 GERARD KENSLEA, MICHAEL WEINSTEIN,  
19 MARIJANE JACKSON, ARLETTE DE LA  
20 CRUZ, MARK ROY McGRATH,

21 Defendants.

CASE NO. BC474838

NOTICE OF MOTION AND MOTION FOR  
JUDGMENT ON COMPLAINT FOR  
DECLARATORY RELIEF, MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF, DECLARATION OF  
KIMBERLY MIERA AND  
ACCOMPANYING EXHIBITS IN SUPPORT  
THEREOF

Date: January 25, 2012  
Time: 8:45 a.m.  
Department: 28

Assigned to the Hon. Yvette M. Palazuelos  
Action Filed: December 8, 2011

22 **TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

23 PLEASE TAKE NOTICE that on January 25, 2012, at 8:45 a.m., in Dept. 28 of the above-  
24 entitled Court, Plaintiff, the City of Los Angeles, will apply to issuance of a Judgment on the  
25 Complaint for Declaratory Relief. This Motion is made pursuant to the above entitled Court's order  
26 of December 15, 2011 and Code of Civil Procedure sections 1060 through 1062.5, and based on the  
27 Plaintiff's Complaint for Declaratory Relief, the attached Memorandum of Points and Authorities in  
28 support thereof, the Declaration of Kimberly Miera, attached hereto and filed herewith, the files and

1 records in this action, and upon oral argument.

2 The City of Los Angeles is seeking a judgment in the underlying action for the following  
3 reasons: the proposed initiative ordinance submitted by Defendants (herein referred to as the Adult  
4 Film Workplace Condom Initiative) is preempted by State law and as a result of the state  
5 preemption, the initiative ordinance cannot be adopted by the City or by an initiative election. The  
6 City of Los Angeles asks the Court to order that the City Clerk be relieved of her duty to prepare the  
7 initiative for certification to the City Council, including verifying and counting petition signatures;  
8 and that the City Council be relieved of its duty, should the City Clerk certify the petition as  
9 sufficient, to adopt the ordinance or place the initiative on the ballot; that no other steps necessary to  
10 place the Adult Film Workplace Condom Initiative on the ballot be taken by any other  
11 governmental agency; and such other and further relief as the Court deems proper.

12 Dated: December 23, 2011

Respectfully submitted,

13 **CARMEN A. TRUTANICH**, City Attorney  
14 **VALERIE L. FLORES**, Managing Assistant City Attorney  
15 **KIMBERLY MIERA**, Deputy City Attorney  
16 **OFFICE OF THE LOS ANGELES CITY ATTORNEY**

17  
18 By \_\_\_\_\_

19 **KIMBERLY MIERA**  
20 Attorneys for City of Los Angeles

**MEMORANDUM OF POINTS AND AUTHORITIES**

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The City respectfully asks this Court for a declaratory judgment regarding the validity of a  
5 proposed initiative ordinance (herein referred to as the Adult Film Workplace Condom Initiative)  
6 that would require City film permits for commercial production of adult films to be conditioned on  
7 the use of "engineering and work practice controls," including the "required use of condoms." State  
8 health and safety laws specifically govern this area and expressly preempt local governments from  
9 regulating the transmission of blood borne pathogens in the workplace. Nor may a local ordinance  
10 circumvent this preemption by casting the preempted regulation as a permit condition. Accordingly,  
11 declaratory and related relief are appropriate and necessary before the City incurs expenditure of  
12 millions of taxpayer dollars to place the invalid measure on the ballot.

13 II.

14 BACKGROUND

15 Defendants are proponents of a proposed initiative ordinance regarding the use of condoms  
16 in the adult film industry. The proposed initiative ordinance would require, in pertinent part:

- 17 4. All producers of adult films issued permits under the authority of the City of Los  
18 Angeles or the Los Angeles Police Department pursuant to Section 12.22(A)(13) of  
19 this Code or any other law authorizing the issuance of permits for commercial  
20 filming are required to maintain engineering and work practice controls sufficient to  
21 protect *employees* from exposure to blood and/or any other potentially infectious  
22 materials controls consistent with California Code of Regulations, Title 8, Section  
23 5193. Engineering and work practice controls include, but are not limited to:  
24 (a) Simulation of sex acts using acting, production and post-production  
25 techniques;  
26 (b) Ejaculation outside workers' bodies;  
27 (c) Provision of and required use of condoms whenever acts of vaginal or  
28 anal sex are performed during the production of an adult film; and  
(d) The provision of condom-safe water-based or silicone-based  
lubricants to facilitate the use of condoms. (Emphasis added.)
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

1 production of an adult film must expressly condition said permit on compliance with  
2 subsection (4) of this section. Any such permit shall contain the following language:  
3 "Permitee must abide by all applicable workplace health and safety regulations,  
4 including California Code of Regulations Title 8, Section 5193, which mandates  
5 barrier protection, including condoms, to shield performers from contact with blood  
6 or other potentially infectious material during the production of films."

6. The City shall charge, or shall direct any other person or entity contracting with the  
City to administer the film permitting process, to charge, entertainment industry  
customers seeking permits for the production of adult films a fee sufficient to allow  
periodic inspections to ensure compliance with the conditions set forth in Section  
12.22.1(B)(4). (Exhibit 1)

9 Additionally, Section 2(f) of the Findings and Purposes of the proposed initiative ordinance  
10 states:

11 Producers of adult films are required by California Code of Regulations Title 8, Section  
12 5193 to use barrier protection, including condoms, to protect employees during the  
13 production of adult films.

14 On December 5, 2011, proponents submitted petitions with the City Clerk in support of their  
15 initiative. (See Declaration of Kimberly Miera, paragraph 3.) The City Clerk is in the process of  
16 examining the petition to determine whether a sufficient number of valid voter signatures have been  
17 submitted to transmit the initiative to the City Council. (Declaration of Kimberly Miera, paragraph  
18 4.) If the petition is sufficient, and the proposed ordinance valid, the City Council must either adopt  
19 the ordinance or place it on the June 5, 2012 state ballot.

20 On December 15, 2011, the City of Los Angeles appeared *ex parte* to ask the court for an  
21 expedited hearing to determine the validity of the proposed initiative measure. The Court scheduled  
22 a regularly noticed hearing for January 25, 2012 at 8:45 a.m. in Department 28 of the above entitled  
23 court.

24 The City of Los Angeles now respectfully moves this Court for an order declaring the City  
25 of Los Angeles is preempted by State law from enacting the proposed initiative ordinance or placing  
26 it on the ballot.  
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III.

**THE PROPOSED INITIATIVE ORDINANCE IS PREEMPTED AND THEREFORE  
INVALID AS A MATTER OF LAW**

A. **Local Ordinances are Preempted on Matters of Statewide Concern That are Not a  
Municipal Affair**

Article XI, Section 7 of the California Constitution grants cities the authority to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general [State] law.”

Generally, a local ordinance is preempted by state law if the issue is deemed to be a “statewide concern.” State law can preempt a particular local ordinance because, although the City has an interest in regulating the field, the state’s interest is deemed to be “more substantial” than the City’s interest in the subject. (See *California Fed. Savings & Loan Ass’n v. City of Los Angeles* (1991) 54 Cal.3d 1, 18.)

Preemption of municipal law occurs when there is a conflict between state and local law. “A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” (*Rental Housing Ass’n of Northern Alameda County v. City of Oakland*, (2009) 171 Cal.App.4th 741, 752.) Moreover, “[i]f otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.” (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.) Courts, however, must “carefully insure that the purported conflict is in fact a genuine one.” (*California Fed. Savings & Loan Ass’n v. City of Los Angeles*, supra, 54 Cal.3d at p. 17.)

A local ordinance may not duplicate a State law. The California Supreme Court in *In re Portnoy* (1942) 21 Cal.2d 237, ruled as unconstitutional a city’s ordinance prohibiting acts already made criminal in the California Penal Code. In its decision, the Supreme Court noted that although a city may lawfully enact supplementary regulations, the ordinance at issue exceeded “the proper limits of supplementary regulation and must be held invalid because in conflict with the statutes which they duplicate.” (*Id.* at 240. See, also, *O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 [“A conflict exists if the local legislation ‘duplicates, contradicts, or enters an area fully

1 occupied by general law, either expressly or by legislative implication.”)] (Citation omitted;  
2 emphasis in original.)

3 In addition to being duplicative, a local ordinance can also be preempted “if it enters an area  
4 that is ‘fully occupied’ by general law when the Legislature has expressly manifested its intent to  
5 ‘fully occupy’ the area or when it has impliedly done so in light of one of the following indicia of  
6 intent: 1) the subject matter has been so fully and completely covered by general law as to clearly  
7 indicate that it has become exclusively a matter of state concern; 2) the subject matter has been  
8 partially covered by general law couched in such terms as to indicate clearly that a paramount state  
9 concern will not tolerate further or additional local action; or 3) the subject matter has been partially  
10 covered by general law, and the subject is of such a nature that the adverse effect of a local  
11 ordinance on the transient citizens of the state outweighs the possible benefit to the locality.” (77  
12 Ops. Cal. Atty. Gen. 147 [state law preempts the adoption of a city ordinance making it a  
13 misdemeanor to sell .22 to .45 caliber ammunition within the boundaries of the city but does not  
14 preempt adoption of a city ordinance requiring ammunition vendors within the city to record and  
15 maintain identification with respect to each purchaser], citing *Ex parte Daniels* (1920) 183 Cal 636,  
16 641-648 [finding ‘contradiction’ where local legislation purported to fix a lower maximum speed  
17 limit for motor vehicles than that which general law fixed].)

18 However, under Art. XI, § 5 charter cities have the power to adopt laws regarding municipal  
19 affairs, and with respect to municipal affairs, that might conflict with state laws. Enactments by  
20 Charter cities may supersede state statutes “with respect to municipal affairs.” (*California Fed.  
21 Savings & Loan Assn v. City of Los Angeles*, supra, 54 Cal.3d at p. 17. Emphasis added.) A  
22 “municipal affair” arises under either the general municipal affairs provision of Art. XI, § 5(a) or  
23 under the “plenary authority” conferred on charter cities by Art. XI, § 5(b).

24 Under *California Fed. Savings & Loan Ass’n v. City of Los Angeles*, supra, and *Johnson v.  
25 Bradley* (1992) 4 Cal. 4th 389, if a matter implicates a “municipal affair” and city law on the matter  
26 conflicts with state statute, the inquiry under § 5(a) then proceeds in “two discrete steps.” First, a  
27 determination is made on whether the state statute qualifies as a matter of “statewide concern.” If  
28 not, then the matter is a municipal affair and beyond the reach of the state statutory authority.

1 Second, if the subject qualifies as a matter of statewide concern, the court next determines whether  
2 the state statute is both (1) reasonably related to the resolution of the state's concern and (2)  
3 "narrowly tailored" to limit incursion into legitimate municipal interests. If the statute meets both  
4 tests, the matter ceases to be a municipal affair and becomes a statewide concern. (*Johnson v.*  
5 *Bradley, supra*, 4 Cal. 4<sup>th</sup> at 404; *California Fed. Savings & Loan Assn. v. City of Los Angeles,*  
6 *supra*, 54 Cal. 3d at 17.) Otherwise, the matter remains a "municipal affair" and is not governed by  
7 the statute. Section 5(b) of the California Constitution grants charter cities special authority over  
8 particular matters. Section 5(b) "sets out a nonexclusive list of four 'core' categories that are, by  
9 definition, 'municipal affairs.'" (*Johnson v. Bradley, supra*, 4 Cal. 4th at 398.) The matters  
10 included within Section 5(b) are immune from preemption by state statute, regardless of the nature  
11 of any statewide interest the state may have in the matters. *Johnson v. Bradley, supra*, 4 Cal. 4th at  
12 398.

13 **B. The Proposed Initiative Ordinance Seeks to Require the City to Regulate Employee**  
14 **Workplace Safety and the State Preempts the Field of Employee Workplace Safety**

15 The Occupational Safety and Health Standards Board and the Division of Occupational  
16 Safety and Health have exclusive jurisdiction over the field of Occupational Safety and Health in  
17 the workplace. Moreover, state law has specifically preempted cities from regulating workplace  
18 health and safety standards related to the transmission of blood borne pathogens.

19 The state's exclusive authority is clear. Labor Code section 142.3, subsection(a)(1)  
20 mandates that "[t]he [Standards] [B]oard shall be the only agency in the state authorized to  
21 adopt occupational safety and health standards." (Emphasis added.) The regulations adopted by  
22 the Standards Board are listed in Title 8 of the California Code of Regulations. Labor Code section  
23 142 provides "[t]he Division of Occupational Safety and Health shall enforce all occupational safety  
24 and health standards adopted pursuant to this chapter. . . ." (*United Air Lines, Inc. v. Occupational*  
25 *Safety and Health Appeals Board* (1982) 32 Cal.3d 762, 766-767.) Labor Code section 6307 states  
26 "[t]he division has the power, jurisdiction, and supervision over every employment and place of  
27 employment in this state, which is necessary adequately to enforce and administer all laws and  
28 lawful standards and orders, or special orders requiring such employment and place of employment

1 to be safe, and requiring the protection of the life, safety, and health of every employee in such  
2 employment or place of employment.”

3 The state has exercised this exclusive authority to specifically regulate workplace  
4 transmission of blood borne pathogens. Labor Code section 144.7 requires the Standards Board to  
5 adopt a blood borne pathogen standard mandating employees exposed to blood borne pathogens in  
6 the workplace be provided with barrier protection. Regulation 5193 is that standard and requires all  
7 employees exposed to blood borne pathogens, including semen and vaginal secretions, be provided  
8 with “personal protective equipment” by their employers. (8 Cal.Reg. 5193 (b).) Regulation 5193  
9 and Labor Code section 144.7 apply to adult film performers and include the required use of  
10 condoms in the adult film industry. The State legislature has stated that the Standards Board has  
11 exclusive jurisdictions over conflicting occupational health and safety standards. (See Labor Code  
12 Section 1173.)

13 The Standards Board's exclusive authority to adopt occupational health and safety standards  
14 in the workplace preempts the City from adopting any such standard. The City also is preempted  
15 from enforcing Regulation 5193 and Labor Code section 144.7 in any manner. However, this is  
16 precisely the sort of preempted regulation proposed in the Adult Film Workplace Condom  
17 Initiative.

18 Labor Code section 6316 does not alter this preemption. Section 6316, which is found in  
19 Division Five of the Labor Code, states “[e]xcept as limited by Chapter 6 (commencing with  
20 Section 140) of Division 1, nothing in this part shall deprive the governing body of any county,  
21 city, or public corporation, board, or department, of any power or jurisdiction over or relative to any  
22 place of employment.” (Emphasis added.) Labor Code section 144.7, however, is contained in  
23 Chapter 6 of Division 1, commencing with Section 140. Reading the Labor Code provisions  
24 together, it is clear that Section 6316 does not remove the City's preempted status when it comes to  
25 the blood borne pathogen standard regulation adopted by the Standards Board, as well as enacted by  
26 the Legislature at Labor Code section 144.7. Based on traditional canons of statutory  
27 interpretation, the State Occupational Safety and Health Standards Board and the Division of  
28 Occupational Safety and Health have exclusive jurisdiction over the field of occupational safety and

1 health in the workplace, including the area of regulations regarding employees exposed to blood  
2 borne pathogens.

3 The City's preempted status is also reflected in Labor Code section 144 which allows for  
4 local agencies to assist "in the administration or enforcement of any occupational safety or health  
5 standard" only through the execution of a written agreement with the state. (Labor Code Section  
6 144(a); See also Labor Code Section 144.5.) If the Legislature had not intended for the  
7 Occupational Safety and Health Standards Board to retain exclusive jurisdiction, the mandate for a  
8 written delegation agreement would not exist and Sections 144 and 144.5 would be superfluous.

9 The proposed initiative ordinance is clearly preempted as it duplicates Regulation 5193  
10 and/or Labor Code section 144.7. The proposed initiative petition provides that "[a]ll producers of  
11 adult films issued permits under the authority of the City of Los Angeles or the Los Angeles Police  
12 Department pursuant to Section 12.22(A)(13) of this Code or any other law authorizing the issuance  
13 of permits for commercial filming are required to maintain engineering and work practice controls  
14 sufficient to protect employees from exposure to blood and/or any other potentially infectious  
15 materials controls consistent with California Code of Regulations, Title 8, Section 5193." (Miera  
16 Decl., Ex. 1) The proposed initiative is premised on a regulation adopted by the Standards Board  
17 and enforceable against employees. Even Cal-OSHA has conceded that the Legislature has placed  
18 the "enforcement of occupational safety and health standards adopted by the [Standards] Board"  
19 solely in the hands of the Division. (Miera Decl., Ex. 3, p. 4.) The proposed initiative would  
20 require the City to enforce the blood borne pathogen regulation with regard to employees that the  
21 "Legislature has put in the hands solely of the Division," a point that Cal-OSHA has admitted.  
22 (Miera Decl., Ex. 3, pp. 2 and 4.)

23 The City is also preempted in the underlying matter because, regarding workplace safety, it  
24 is clear the State of California expressly intended to occupy the field. "California has actively  
25 asserted jurisdiction over all places of employment with California since 1917. Exceptions to the  
26 broad claims of jurisdiction have been narrowly construed." (*In re: SAIC* (2009) Cal/OSHA App.  
27 03-2201; *United Air Lines, Inc. v. Occupational Safety and Health Appeals Board* (1982) 32 Cal.3d  
28 762; *In re: JS Brower & Associates, Inc.* Cal/OSHA App. 77-1315; and *In re Sacramento*

1 *Municipal Utility District* Cal/OSHA App. 00-1136 [The burden of proof lies with an employer to  
2 prove an exception to jurisdiction exists.])” Moreover, “[u]nder the Labor Code, the Division  
3 (referring to Cal-OSHA) has jurisdiction over every employment and place of employment of  
4 California. (Labor Code section 6307.)” (*In re: SAIC* (2009) Cal/OSHA App. 03-2201.) (Also see  
5 Labor Code sections 6307, 6304.1, 6304/3300, 144.5, 144, 144.7, 142.3.)

6 The Occupational Safety and Health Appeals Board has held that “[i]n the State of  
7 California, the Division of Occupational Safety and Health has the power, jurisdiction and  
8 supervision over every employment and place of employment in this state. Under Labor Code  
9 section 6303, ‘place of employment’ includes any place in the State where employment is carried  
10 out and excepts only those places when enforcement is vested in and actively exercised by another  
11 state or federal agency.” (*In re Sacramento Municipal Utility District* Cal/OSHA App. 00-1136)  
12 Finally, Labor Code section 142.3 unequivocally mandates that “[t]he board shall be the only  
13 agency in the state authorized to adopt occupational safety and health standards.” (Emphasis added)

14 In addition to expressly occupying the field, the state can impliedly occupy the field of a  
15 particular area. “. . . [I]n determining whether the State has preempted the field, the courts will look  
16 to the ‘whole purpose and scope of the legislative scheme’ and will determine whether the field is  
17 one which requires uniform regulation throughout the state.” (43 Ops. Cal. Atty. Gen. 261; internal  
18 citations omitted.) Regarding workplace safety, the Legislature has enacted a comprehensive  
19 statutory scheme covering Jurisdiction and Duties (Section 6300), Education and Research (Section  
20 6350), Hazardous Substances Information and Training (Section 6360), Responsibilities and Duties  
21 of Employers and Employees (Section 6400), Penalties (Section 6423), Temporary Variances  
22 (Section 6450), Permit Requirements (Section 6500), Appeal Proceedings (Section 6600),  
23 Enforcement of Civil Penalties (Section 6650), and Miscellaneous Safety Provisions (Section 6700).

24 Regarding workplace safety, the legislative scheme is lengthy and thorough – implying the  
25 Legislature intended to occupy the field, in addition to expressing its intent. Moreover, it can  
26 reasonably be implied that the Legislature intended the State retain jurisdiction over occupational  
27 safety and health regulations adopted by the Standards Board because the Legislature requires all  
28 agencies other than the Department of Industrial Relations (which oversees the Occupational Safety

1 and Health Standard Board) to enter into a written agreement with the State before assisting with  
2 the regulation of any of the Standard Board's statutes, including Labor Code section 144.7

3 In the instant matter, the State of California has expressly demonstrated an intent to fully  
4 occupy the field of workplace exposure to blood borne pathogen with respect to its regulations  
5 adopted by the Standards Board, codified in Labor Code section 140, *et seq.* The Legislature has  
6 also implied its intent through its comprehensive statutory scheme and by requiring cooperative  
7 agreements to enforce regulations adopted by the Standards Board.

8 The proposed initiative ordinance is not a municipal affair within the City's charter  
9 authority. Although a majority of adult films shoot within the boundaries of the City of Los  
10 Angeles, the filming by no means is limited to our city. The matter of protecting employees  
11 exposed to blood borne pathogens is a matter of statewide concern, as it reaches far beyond  
12 "municipal concerns". In fact, it has been noted that the state workplace safety regulations are a  
13 "matter of statewide interest and concern" necessitating uniform regulation. (*In re: Schultz and*  
14 *Noll, dba The SHOWBOATD LOUNGE* (2003) Ca OSHA App. Bd. 01-125 [Labor Code section  
15 6404.05 {prohibiting smoking in enclosed workplaces} is a matter of statewide concern].) Here, the  
16 constitutional grant for authority for charter cities has no application because the establishment of  
17 workplace safety clearly is a matter of statewide concern. "Hence, these state laws would prevail  
18 over any conflicting regulatory acts of a charter city." (88 Ops, Cal. Atty. Gen. 113 [statewide  
19 registry and identification card program preempts the operation of a city's own registry and  
20 identification card program].) As a result, a local ordinance regulating workplace safety would  
21 undoubtedly be preempted and held void. (*Ibid.*) Accordingly, the City cannot lawfully adopt the  
22 proposed initiative ordinance as it is invalid.

23 **C. A City Cannot Evade Preemption by Imposing Local Permit Conditions**

24 The underlying proposed initiative would grant the City of Los Angeles the ability to  
25 condition its film permits on occupational safety and health standards adopted by the Standards  
26 Board, against employees, for which the City of Los Angeles is preempted from regulating. When  
27 the City is preempted from regulating a certain area of the law, a permit condition duplicating the  
28

1 state law cannot be used as a vehicle to avoid or circumvent preemption. Various courts and  
2 authorities have reached this conclusion.

3 In *People v. Torch Energy Services, Inc.* (2002) 102 Cal.App.4th 187, the Court held a local  
4 permit condition was preempted by federal law. In *Torch*, the County of Santa Barbara approved  
5 permits to construct a heating, separating and pumping plant; onshore pipelines and an electrical  
6 substation. The approval of the permits was based in part on the permittee's compliance with  
7 numerous conditions attached to the permits, including several safety standards. In a later  
8 enforcement action to enforce the permit conditions, the Court observed that the federal regulations  
9 expressly stated that "a state authority may not adopt or continue in force safety standards for  
10 interstate pipeline facilities or interstate pipeline transportation." (*Id.* at p. 187.) In rendering its  
11 holding, the Court cited *Southern Cal. Gas Co. v. Occupational Safety & Health Appeals Bd.* (1997)  
12 58 Cal.App.4th 200 "because its language is clear and concise: ' . . . Since Congress has fully  
13 occupied the field of natural gas pipeline safety, there is no room for state supplementary regulation,  
14 even if there is no conflict with any given provision. . . The [state] Division was without jurisdiction  
15 to enforce either conflicting, supplementary, or duplicative regulations, and the citation issued by it  
16 is a nullity." (*Ibid.*) The Court ultimately held that "[t]he language of the [federal statute] clearly  
17 expresses the intent of Congress to fully occupy the field of oil and gas operations and interstate  
18 pipeline safety so that any state law that touches upon the area, even consistent state law, is  
19 preempted." (*Ibid.*)

20 In *City of Rancho Palos Verdes v. Abrams* (2002) (*Abrams*) 101 Cal.App.4th 367, the Court  
21 concluded the City of Rancho Palos Verdes could not condition a permit on a matter in which the  
22 City was preempted. In *Abrams*, the City obtained an injunction prohibiting an individual licensed  
23 by the FCC as a "ham" radio operator, from using any antenna for commercial purposes without a  
24 city permit. The appellate court vacated the trial court judgment granting an injunction on the  
25 grounds that the FCC had exclusive jurisdiction to regulate radio communications, and thus the City  
26 was preempted from conditioning issuance of a permit on a matter over which the City lacked  
27 jurisdiction. (*Id.* at pp. 374 – 382.) In doing so, the Court stated "[t]he City cannot condition a  
28 permit on a preempted provision."

1 The Attorney General has reached similar conclusions. (See 60 Ops. Cal. Atty. Gen. 44  
2 (1977) concluding that the County of San Diego was preempted from requiring applicants for  
3 building permits to comply with affirmative marketing programs developed by the county and  
4 designed to prevent discrimination in the sale or rental of housing, given that Health & Safety Code  
5 section 35743 fully occupied the field of discrimination in housing on the basis of race, color,  
6 religion, marital status, national origin or ancestry).

7 In other circumstances not present here, courts have upheld conditions imposed in  
8 supplementary permits when not preempted by state law. (See *Viacom Outdoor, Inc. v. City or*  
9 *Arcata* (2002) 140 Cal.App.4th 230, 246 [City not preempted from requiring a permit to rebuild a  
10 damaged billboard because the State legislation “explicitly and repeatedly invite[d] augmentation  
11 from local authorities.”]; *Metromedia Inc v. City of San Diego* (1980) 26 Cal.3d 848 (reversed on  
12 other grounds) [concluding that the city ordinance banning billboards was preempted to the extent it  
13 did not allow for compensation as required by the state legislation]; and *Travis v. County of Santa*  
14 *Cruz* (2004) 33 Cal.4th 757 [procedural conditions placed on permit conditions challenged as  
15 preempted].) Requiring the use of barrier protection as a condition of a filming permit would not be  
16 supplementary to, but rather would be preempted by State law, specifically, Labor Code Section  
17 6316, 144.7, and Regulation 5193.

18  
19 IV.

20 **PRE-ELECTION JUDICIAL INTERVENTION IS NECESSARY AND PROPER**

21 Courts repeatedly have held that where a city is faced with a proposed initiative it deems to  
22 be invalid, the appropriate course of action is for the city to seek declaratory relief before placing  
23 the initiative on the ballot, just as the City of Los Angeles has done here. The Court of Appeal  
24 expressly endorsed this approach in *City of Riverside v. Stansbury* (2007) 155 Cal.App.4th 1582,  
25 where the city filed a preelection declaratory relief action against an eminent domain initiative  
26 believing the initiative infringed on a statewide concern. “By its declaratory relief action, the City  
27 was simply asking for guidance as to the constitutionality of the proposed initiative. ... Moreover, it  
28 was proper for the City to initiate its declaratory relief action as a means of disputing, in a

1 preelection challenge, the validity of the initiative.” (*Id.* at pp. 1590-1591; see also *Widders v.*  
2 *Furchtenicht* (2008) 167 Cal.App.4th 769, 777-779, 783, [holding that a city attorney appropriately  
3 sought preelection declaratory relief against an initiative the city attorney deemed invalid]; *Save*  
4 *Stanislaus Area Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th 141, 149 [opining  
5 that local governments faced with invalid initiative should seek court intervention prior to placing  
6 initiative on the ballot].)

7 The courts have acknowledged there is no right to have an invalid measure placed on a  
8 ballot. (See *Widders v. Furchtenicht*, *supra*, 167 Cal.App.4th at p. 780; *City of Riverside v.*  
9 *Stansbury*, *supra*, 155 Cal.App.4th at p.1592). Nor is it a proper subject of an initiative as the City  
10 could not adopt this invalid ordinance. (Charter Section 450). Further, preelection review of a  
11 ballot measure is particularly appropriate where, as in this case, “the proposal’s validity is in  
12 question and where the matter can be resolved as a matter of law.” (*City of Riverside v. Stansbury*,  
13 *supra*, 155 Cal.App.4th at p. 1592 [discussing *City of San Diego v. Dunkl* (2001) 86 Cal.App.4th  
14 384, 389].) The legality of the initiative at issue here is strictly a question of law and thus  
15 particularly suited for preelection review.

16 Additionally, courts have consistently held preelection review is appropriate to avoid  
17 unnecessary election costs. “The costs of an election – and of preparing the ballot materials  
18 necessary for each measure – are far from insignificant. Proponents and opponents of a measure  
19 may both expend large sums of money during the election campaign. Frequently, the heated  
20 rhetoric of an election campaign may open permanent rifts in a community. That the people’s right  
21 to directly legislate through the initiative process is to be respected and cherished does not require  
22 the useless expenditure of money and creation of emotional community divisions concerning a  
23 measure which is for any reason legally invalid.” (*Citizens for Responsible Behavior v. Superior*  
24 *Court* (1991) 1 Cal.App.4th 1013, 1023 [Internal citation omitted].)

25 In the underlying matter, it will cost the City more than \$4 million to place the Adult Film  
26 Workplace Condom Initiative on the ballot. (Miera Declaration, paragraph 5.) Proponents and  
27 opponents of the measure will spend countless more in support of their respective positions. A  
28

1 determination of the validity of the initiative prior to the election, and as early as possible before  
2 election expenditures have been incurred, is therefore necessary.

3 . In addition to wasting valuable financial resources, the court in *Senate of State of California*  
4 *v. Jones* (1999) 21 Cal.4th 1142 counseled reviewing courts they will harm the elective franchise, as  
5 well as to the ballot measure power, if they choose to forgo their judicial duty to remove measures  
6 from the ballot that are not properly put before the voters.

7 The presence of an invalid measure on the ballot steals attention, time and money from the  
8 numerous valid propositions on the same ballot. It will confuse some voters and frustrate  
9 others, and an ultimate decision that the measure is invalid, coming after the voters have  
10 voted in favor of the measure, tends to denigrate the legitimate use of the initiative  
11 procedure. . . . '[If an initiative measure] is facially defective in its entirety, it is' wholly  
12 unjustified to allow voters to give their time, thought, and deliberation to the question of the  
desirability of the legislation as to which they are to cast their ballots, and thereafter, if their  
vote be in the affirmative, confront them with a judicial decree that their action was in vain. .  
.."' (Internal citations omitted.)

13 (*Id.* at p. 1154-1155.) In the instant matter, the initiative is facially defective in its entirety because  
14 it requires the City of Los Angeles to enforce an occupational safety and health standard adopted by  
15 the Standards Board in an employer/employee structured workplace.

16 Courts have been willing to find preelection intervention proper when there is a compelling  
17 showing the electorate lacks the power to adopt the proposal in the first place or where the  
18 substantive provisions of the proposed measure are legally invalid. (*Id.* at pp. 1209-1210.) In  
19 *deBottari v. City Council of the City of Norco, et al*, (1985) 171 Cal.App.3d 1204, the Norco City  
20 Council refused to submit a properly certified referendum petition to the voters arguing that the  
21 repeal of the challenged ordinances would result in a legally invalid zoning scheme. At the time the  
22 decision was rendered, state law prohibited enactment of a zoning ordinance inconsistent with the  
23 general plan. The Norco City Council argued that since the repeal of the zoning amendment at  
24 issue would result in a zoning ordinance inconsistent with the general plan, it satisfied the  
25 "compelling showing" standard to demonstrate the proposed referendum was clearly invalid. The  
26 court agreed, concluding that "if successful, [the referendum] would enact a clearly invalid zoning  
27 ordinance. **Judicial deference to the electoral process does not compel judicial apathy towards**  
28 **patently invalid legislative acts.**" (*Id.* at p. 1213. Emphasis added.)

1 In *Save Stanislaus Area Farm Economy (SAFE) v. Board of Supervisors*, supra, 13  
2 Cal.App.4th 141, the subject initiative sought to amend Stanislaus County's general plan by  
3 readopting the current land-use plan for certain agricultural land and by permitting the designation  
4 of that land to be changed only upon certain conditions. The Board of Supervisors referred the  
5 initiative to county staffers who reported internal inconsistencies, conflicts with other parts of the  
6 general plan, and conflicts with state laws. Ultimately, the Board voted to exclude the initiative  
7 from the ballot.

8 SAFE filed a petition for writ of mandate. The Board answered arguing the initiative was  
9 illegal. The court found that pre-election judicial review was proper to determine whether the  
10 Board was substantively correct in deciding the initiative was illegal. The court noted that a  
11 measure should be removed from the ballot upon a compelling showing that the initiative was  
12 clearly invalid as a matter of law. (*Id.* at p. 150.)

13 In the instant matter, the City of Los Angeles is entitled to a judgment on its complaint for  
14 declaratory relief because a compelling showing has been established that proposed petition  
15 initiative, as written, is preempted by state law and therefore, clearly invalid.

16 V.

17 **CONCLUSION**

18 For all the forgoing reasons, a judgment should be entered declaring the proposed initiative  
19 preempted by state law and granting all appropriate relief.

20  
21 Dated: December 23, 2011

Respectfully submitted,

22 **CARMEN A. TRUTANICH**, City Attorney  
23 **VALERIE L. FLORES**, Managing Assistant City Attorney  
24 **KIMBERLY MIERA**, Deputy City Attorney  
25 **OFFICE OF THE LOS ANGELES CITY ATTORNEY**

26 By *Kim Miera* /HMT

27 **KIMBERLY MIERA**  
28 Attorneys for City of Los Angeles

# MIERA DECLARATION

1  
2 **DECLARATION OF KIMBERLY MIERA**

3  
4 I, KIMBERLY MIERA, declare as follows:

5 1. I am an attorney at law duly licensed to practice before all the courts of the State of  
6 California and am a Deputy City Attorney, attorney of record for the City of Los Angeles. I have  
7 personal knowledge of the following facts and, if called as a witness, I could and would  
8 competently testify thereto.

9 2. A true and correct copy of the Adult Film Workplace Condom Initiative is attached  
10 hereto as Exhibit 1.

11 3. I am informed and believe, and thereon allege that on December 5, 2011, proponents  
12 of the initiative filed the initiative petition with the City Clerk's Office.

13 4. I am informed and believe, and thereon allege that the City Clerk's Office is in the  
14 process of reviewing the petition to determine whether it contains a sufficient number of valid voter  
15 signatures.

16 5. I am informed and believe, and thereon allege that the estimated cost of placing a  
17 measure on the June 2012 State ballot is \$4.4 million, unless the City also places other measures on  
18 the ballot in which case each additional measure would cost an additional \$500,000. A true and  
19 correct copy of the City Clerk's Report to Council, dated September 21, 2011, is attached hereto as  
20 Exhibit 2.

21 6. A true and correct copy of a letter from Cal-OSHA staff attorney, James Clark,  
22 addressed to the Los Angeles City Council, dated July 20, 2011 is attached as Exhibit 3.

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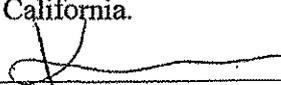
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1           7.     I am informed and believe and thereon allege that the City currently has not yet  
2 requested any measure be consolidated with the June 2012 Statewide Primary election. Please see  
3 Exhibit 2.

4           I declare under penalty of perjury under the laws of the State of California that the foregoing  
5 is true and correct.

6           Executed on December 22, 2011, in Los Angeles, California.

7   
8 \_\_\_\_\_  
9 KIMBERLY MIERA  
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# MIERA DECLARATION

## EXHIBIT 1

# INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

Committee of proponents, who are registered voters of the City of Los Angeles, sponsoring the petition:  
Gerard Kenslea, Michael Weinstein, Marijane Jackson, Arlette De La Cruz, Mark Roy McGrath

As required by the Charter, the City Attorney has prepared the following official petition title, and official petition summary of the primary provisions of this initiative ordinance measure to be adopted by the City Council or submitted directly to the voters.

## ADULT FILM INDUSTRY; USE OF CONDOMS; FILM PERMITS. INITIATIVE ORDINANCE.

The proposed ordinance would require any person or entity directly engaged in the creation of adult films who is issued a permit under the authority of the City of Los Angeles (City) for commercial filming of an adult film to maintain engineering and work practice controls, including the provision of and required use of condoms, sufficient to protect employees from exposure to blood or other potentially infectious materials consistent with state law. The proposed ordinance also would require that any film permit issued under authority of the City for commercial filming of an adult film be conditioned on compliance with this requirement and include language regarding the obligation to comply with applicable workplace health and safety regulations. The proposed ordinance also would require the City to charge applicants seeking permits for production of adult films a fee sufficient to pay for periodic inspections. The proposed ordinance would amend the Los Angeles City Municipal Code.

### TEXT OF THE PROPOSED MEASURE

#### CITY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

##### Section 1. Title.

This ordinance shall be known and may be cited as the City of Los Angeles Safer Sex In The Adult Film Industry Act.

##### Section 2. Findings and Declaration.

The people of the City of Los Angeles hereby find and declare all of the following:

- (a) The HIV/AIDS crisis, and the ongoing epidemic of sexually transmitted infections as a result of the making of adult films, has caused a negative impact on public health and the quality of life of citizens living in Los Angeles.
- (b) Safer sex practices are a prime method of preventing and reducing the spread of HIV/AIDS and other sexually transmitted infections.
- (c) The Los Angeles County Department of Public Health has documented widespread transmission of sexually transmitted infections associated with the activities of the adult film industry within the City of Los Angeles.
- (d) The Los Angeles County Department of Public Health has opined that the use of condoms is the best and most effective way to stem the spread of sexually transmitted infections within the adult film industry.
- (e) Multiple organizations committed to protecting the public health have called for mandatory use of condoms in the production of adult films, including the American Medical Association, the American Public Health Association, the California Conference of Local AIDS Directors, the California STD Controllers Association, the National Coalition of STD Directors, the National Association of City and County Health Officials, AIDS Healthcare Foundation and the California Medical Association.
- (f) Producers of adult films are required by California Code of Regulations Title 8, Section 5193 to use barrier protection, including condoms, to protect employees during the production of adult films.
- (g) Many producers of adult films in Los Angeles consistently violate the worker safety provisions of California Code of Regulations Title 8, section 5193.
- (h) Pursuant to Section 12.22(A)(13) of the Los Angeles Planning and Zoning Code, producers of all films within the City of Los Angeles, including adult films, are required to obtain film permits. Permits issued pursuant to Section 12.22(A)(13) may contain conditions "consistent with public health, safety

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and general welfare.”

- (i) Permits for adult films are currently conditioned with language stating “INTERIOR AND EXTERIOR NUDITY OR SEXUAL ACTIVITY MUST NOT BE VISIBLE OR AUDIBLE BY THE PUBLIC.”
- (j) The City or any person or entity acting on its behalf to issue or process film permits may charge permittees fees in conjunction with the issuance of film permits. Such fees may include fees to provide for inspectors to ensure compliance with conditions on film permits.

### **Section 3. Purpose and Intent.**

The people of the City of Los Angeles hereby declare their purpose and intent in enacting this ordinance to be to minimize the spread of sexually transmitted infections resulting from the production of adult films in the City of Los Angeles, which have caused a negative impact on public health and the quality of life of citizens living in Los Angeles.

### **Section 4.**

Section 12.22.1 is hereby added to the Los Angeles Planning and Zoning Code to read as follows:

#### **SECTION 12.22.1**

#### **SAFER SEX**

#### **CHAPTER 1**

#### **SAFER SEX; SHORT TITLE AND PUBLIC POLICY**

##### **12.22.1(A). Short Title.**

This chapter shall be known as the City of Los Angeles Safer Sex In The Adult Film Industry Act.

##### **12.22.1(B). Use of Condoms In The Making of Adult Films**

- (1) An “adult film” is defined as any film, video, multimedia or other representation 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 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) “Producer of adult film” is defined as any person or entity directly engaged in the creation of adult films.
- (3) “Filmed” and “filming” refer to the recording of any adult film, regardless of media.
- (4) All producers of adult films issued permits 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 are required to maintain engineering and work practice controls sufficient to protect employees from exposure to blood and/or any other potentially infectious materials controls consistent with California Code of Regulations, Title 8, Section 5193. Engineering and work practice controls include, but are not limited to:
  - (a) Simulation of sex acts using acting, production and post-production techniques;
  - (b) Ejaculation outside workers’ bodies;
  - (c) Provision of and required use of condoms whenever acts of vaginal or anal sex are performed during the production of an adult film; and
  - (d) The provision of condom-safe water-based or silicone-based lubricants to facilitate the use of condoms.
- (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 an adult film must expressly condition said permit on compliance with subsection (4) of this section. Any such permit shall contain the following language: “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.”
- (6) The City shall charge, or shall direct any other person or entity contracting with the City to administer the film permitting process, to charge, entertainment industry customers seeking permits for the production of adult films a fee sufficient to allow periodic inspections to ensure compliance with the conditions set forth in Section 12.22.1(B)(4).

**Section 5. Competing Measures**

In the event that this measure and another measure or measures relating to the permit process for adult films shall appear on the same ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other relating to the permit process for adult films shall be null and void.

**Section 6. Amendment and Repeal.**

This chapter may be amended to further its purposes by ordinance passed by a majority vote of the Council and approved by the Mayor.

This chapter may not be 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.

**Section 7. Severability**

If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of the Act are severable.

**NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.**

**Signers Must Be Registered Voters of the City of Los Angeles  
Use Pen Only - Please Print All Information Except for Signature**

	NAME OF PETITIONER	ADDRESS	DATE	OFFICE USE ONLY
1	Print Name	Residence Address (No P.O. Box)	Birthdate*	
	Signature	City Zip	Today's Date	
2	Print Name	Residence Address (No P.O. Box)	Birthdate*	
	Signature	City Zip	Today's Date	
3	Print Name	Residence Address (No P.O. Box)	Birthdate*	
	Signature	City Zip	Today's Date	
4	Print Name	Residence Address (No P.O. Box)	Birthdate*	
	Signature	City Zip	Today's Date	
5	Print Name	Residence Address (No P.O. Box)	Birthdate*	
	Signature	City Zip	Today's Date	
6	Print Name	Residence Address (No P.O. Box)	Birthdate*	
	Signature	City Zip	Today's Date	

\*Optional: Birth month and date may be used solely to facilitate the signature verification process.

**MIERA DECLARATION**

**EXHIBIT 2**

JUNE LAGMAY  
CITY CLERK  
—  
HOLLY L. WOLCOTT  
EXECUTIVE OFFICER

CITY OF LOS ANGELES  
CALIFORNIA



ANTONIO R. VILLARAIGOSA  
MAYOR

OFFICE OF THE  
CITY CLERK  
ROOM 360, CITY HALL  
200 N. SPRING STREET  
LOS ANGELES, CA 90012  
(213) 978-1020  
FAX (213) 978-1027

September 21, 2011

Honorable Members of the City Council  
200 N. Spring Street  
Los Angeles, CA 90012

**RE: COST ESTIMATES TO PLACE CITY BALLOT MEASURES ON  
THE 2012 STATE PRIMARY OR 2012 GENERAL ELECTION**

Honorable Members:

In 2012, the L.A. County Registrar-Recorder will administer the California State Primary Election on June 5, 2012 and the General Election on November 6, 2012. For your information, based on estimates provided by the L.A. County Registrar-Recorder, the approximate cost for the City of Los Angeles to add one or more ballot measures to the 2012 Primary or General Election would be as follows:

	County's cost (Election administration)	+	City's cost (Voter Info Pamphlet)	=	Total estimated cost
<b>For the June 5, 2012 Primary Election:</b>					
One measure	\$3.7m		\$700,000		\$4.4m
Two measures	\$4.1m		\$800,000		\$4.9m
Three measures	\$4.5m		\$900,000		\$5.4m
Four measures	\$4.9m		\$1m		\$5.9m
Five measures	\$5.3m		\$1.1m		\$6.4m
<b>For the November 6, 2012 General Election:</b>					
One measure	\$3.7m		\$700,000		\$4.4m
Two measures	\$4.0m		\$800,000		\$4.8m
Three measures	\$4.3m		\$900,000		\$5.2m
Four measures	\$4.6m		\$1m		\$5.6m
Five measures	\$4.9m		\$1.1m		\$6.0m

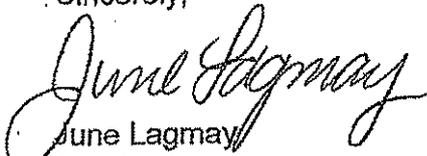
These estimates are based on current factors such as (but not restricted to) voter registration, permanent absentee voters, voting precincts, supplies, and number of other jurisdictions sharing prorated costs with the City. Changes in any of these factors will

Honorable Members of the City Council  
September 21, 2011  
Page 2

have impact on final costs. Actual costs will be determined after the election has concluded.

If you have any questions regarding this report, please feel free to contact me directly at (213) 978-1020.

Sincerely,



June Lagmay  
City Clerk

cc: Honorable Antonio R. Villaraigosa, Mayor  
Honorable Carmen Trutanich, City Attorney  
Honorable Wendy Greuel, Controller  
Miguel Santana, City Administrative Officer  
Gerry Miller, Chief Legislative Analyst

EXE-059-11

# MIERA DECLARATION

## EXHIBIT 3

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH  
LEGAL UNIT - SOUTHERN CALIFORNIA  
320 WEST 4TH STREET, SUITE 400  
LOS ANGELES, CA 90013  
TELEPHONE (213) 576-7492 FAX (213) 576-7498



July 20, 2011

The Honorable City Council  
City of Los Angeles  
Room 395, City Hall  
200 North spring Street  
Los Angeles, CA 90012

Re: Position of the California Division of Occupational Safety and Health Concerning Possible Conditions on the City's Film Permits Issued to Adult Film Producers

Honorable Members:

The City of Los Angeles is considering film permit conditions that would protect public health and safety. The City Attorney has rendered an opinion that the City does not have the power to adopt such conditions because they are preempted by State occupational safety and health standards. Such an opinion, if accepted, would impact any similar proposals in the State. Because of its potential effects, the Division, as the agency entrusted with enforcing those standards, submits this opinion concerning this issue.

This communication is restricted to the legal position of the California Division of Occupational Safety and Health ("Cal/OSHA" or the "Division," herein) in connection with the legal argument that State law pre-empts occupational health and safety conditions the City might impose on its film permitted process.

### CONCLUSION

It is the Division's position that State law does not preempt such action by the City because the City does not seek to enact an occupational health and safety standard but rather a public health standard applicable to any film activity (regardless of employment relationship) within the City boundaries.

## ANALYSIS

### I. THE PROPOSED ACTION AND APPLICABLE STATE LAW A. Proposed City Action

We begin with the nature of the proposed action. The City Attorney has stated that the Council asks whether and how the City can “enable the City’s film permit process to require workplace safety in the production of all adult films.”<sup>1</sup> From other reports, we believe that the specific proposal is a requirement for the use of condoms to protect actors who engage in high-risk acts of a sexual nature for such films.

Although the City Attorney’s report does not specify the action that the Council might take, we understand from City sources that the action would be to add a condition to the permit allowing the filming.

This permit is, in essence, an exception to, or variance from, existing zoning ordinances that prohibit filming in the City except on a sound stage. In that respect, the potential City action would be zoning in nature. The permit also acts as permission to use City property. In this respect, the action would be a condition for the use of that property.

In either case, the permit process would be based on the act of filming. Thus, it would affect all non-soundstage film workplaces regardless of the employment status of the individuals doing the work.<sup>2</sup>

The City’s remedy for violating any of the conditions would be revocation of the permit. Any filming done without a permit would be a crime. There is no proposal of which we are aware that would allow the City to take action either in place of, or in the same way as Cal/OSHA regulations (Title 8 California Code of Regulations (“CCR”). The proposed action would not implicate the Cal/OSHA Appeals Process.

### B. Applicable State Law

The Division has jurisdiction over “places of employment.” (Labor Code § 6307) It has no jurisdiction unless an employer-employee relationship exists. Once this relationship exists,

---

<sup>1</sup> We rely on the description of the proposal and other material in the City attorney’s Report re: Mechanisms Necessary to Enable the City’s Film Permit Process to Require Workplace Safety in the Production of All Adult Films, Report No. R11-0120, dated March 22, 2011.

<sup>2</sup> It is our understanding that films produced using one of the sound stages in the City do not require a permit.

the Division has "supervision over every employment and place of employment in this state . . ."

The Labor Code and Title 8 CCR also set forth the means by which the Division is to exercise its authority to assure employee safety. The system for asserting its authority is, generally, by issuing citations that include administrative penalties for violating one or more of the Title's workplace safety standards. (See Labor Code § 6317) These penalties are not criminal in nature, nor are they contractual. They are appealable to the California Occupational Safety and Health Appeals Board. (Labor Code § 6319)

The California Occupational Safety and Health Standards Board has adopted a general purpose regulation which applies to adult film production as well as other places of employment. Title 8 CCR § 5193 requires the use of condoms on adult film locations that are within the Division's jurisdiction.

#### C. Comparison of the Proposed Action and State Law

The proposed City action and state law operate differently and for different purposes. The state law operates in the context of administrative regulations adopted by the Standards Board and appealable to the Appeals Board. The proposed City action operates as a condition on the granting of a permit.

The state law and the proposed action also do not affect all of the same people. Actors or volunteers who are independent contractors would not be within the Division's jurisdiction, for instance. The purpose of the Standards Board's regulation is to protect health of employees in places of employment and the purpose of the City's permit process is to protect public health and safety regardless of employment relationship.

## II. THE CITY'S GENERAL AUTHORITY TO ADDRESS PUBLIC SAFETY AND HEALTH

### A. The Police Power

The City's police power authority to adopt film conditions is assumed for the purposes of this opinion. The Division notes that the film permitting process has been traditionally a matter of local concern for cities in the State. Chapter 3 of Part 5.7 of Division 3, title 2 of the California Government Code (beginning with § 14999.20) does not impose a uniform permitting process, but establishes a "model" film permitting process that is advisory to localities, not mandatory. Further, we note that the use of City property is uniquely a matter of City concern. (See e.g., *Loska vs. Superior Court* (1986) 188 Cal. App. 3<sup>rd</sup> 569). Cities regulate places of employment, including film sets, in any number of ways. For example, building permits are issued and fire codes are enforced regardless of employment status even though that enforcement may affect occupational safety and may overlap with Cal OSHA

jurisdiction.

B. Express Limitations in the Applicable State Law

The question is whether regulations enforceable by the Division act to limit this basic power.

The Legislature has expressly answered in the negative. In Labor Code § 6316, it said:

“Except as limited by Chapter 6 (commencing with Section 140) of Division 1, nothing in this part shall deprive the governing body of any county, city, or public corporation, board, or department, of any power or jurisdiction over or relative to any place of employment.”

And in Chapter 6 of Division 1 of the Labor Code the Legislature adopted Section 144. That section describes ways in which localities can assist the Division in enforcing its occupational safety and health regulations (i.e., those regulations that are adopted under Title 8 CCR and expressly made the subject of Division enforcement).

In § 144(e), the Legislature made clear that when not enforcing those regulations, localities have a free hand.

“(e) Nothing in this section shall affect or limit the authority of any state or local agency as to any matter other than the enforcement of occupational safety and health standards adopted by the board; however, nothing herein shall limit or reduce the authority of local agencies to adopt and enforce higher standards relating to occupational safety and health for their own employees.” (Emphasis added.)

It is clear that the only matter that the Legislature has put in the hands solely of the Division is the “enforcement of occupational safety and health standards adopted by the [Standards] [B]oard.”

By clear implication, localities may adopt and enforce their own standards as long as that adoption is within the localities’ police powers. This is true even if the local standards could be construed as “occupational safety and health standards.”

### III. THE CITY’S AUTHORITY TO TAKE THE PROPOSED ACTION

The conclusion is clear. The Legislature allows local safety action, other than explicit enforcement of the Division’s own regulations. It has done so in express and unambiguous terms.

The Honorable City Council  
City of Los Angeles  
July 20, 2011  
Page 5 of 5

The City is not preempted from taking the proposed action.

Very truly yours,



James D. Clark  
Staff Counsel

1 **PROOF OF SERVICE**

2 I, Athena Chenoweth, declare as follows:

3 At the time of service I was over 18 years of age and not a party to this action. My  
4 business address is 200 North Main Street, City Hall East, 8<sup>th</sup> Floor, Los Angeles,  
5 California 90012, which is in the County, City and State where this mailing occurred.

6 On December 23, 2011, I served the document(s) described as

7 **NOTICE OF MOTION AND MOTION FOR JUDGMENT ON COMPLAINT FOR  
8 DECLARATORY RELIEF, MEMORANDUM OF POINTS AND AUTHORITIES IN  
9 SUPPORT THEREOF, DECLARATION OF KIMBERLY MIERA AND ACCOMPANYING  
10 EXHIBITS IN SUPPORT THEREOF**

11 on all interested parties in this action:

12 Marijane Jackson In Pro Per  
13 236 South Avenue 60  
14 Los Angeles, CA 90042

15 Gerard Kenslea In Pro Per  
16 6847 Radford Ave., #4  
17 Los Angeles, CA 91605

18 Mark Roy McGrath In Pro Per  
19 930 South Serrano Ave.  
20 L.A. 90006

21 **[STATE]** I enclosed true copies of the documents(s) in a sealed envelope or package  
22 addressed to the person(s) address(es) as above and:

23 **[ X ] BY UNITED STATES MAIL:** I placed the envelope for collection and mailing,  
24 following our ordinary business practices. I am readily familiar with this business' practice for  
25 collecting and processing correspondence for mailing. On the same day that correspondence  
26 is placed for collection and mailing, it is deposited in the ordinary course of business with the  
27 United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that  
28 on motion of the party served, service is presumed invalid if the postal cancellation date or  
postage meter date is more than one day after date of deposit for mailing affidavit.

**[ X ]** I deposited the sealed envelope with the United States Postal Service, with the  
postage fully prepaid.

**[ ] BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or  
package provided by an overnight delivery carrier and addressed to the persons at the  
addresses above. I placed the envelope or package for collection and overnight delivery at an  
office or a regularly utilized drop box of the overnight delivery carrier.

---

**NOTICE OF MOTION AND MOTION FOR JUDGMENT ON COMPLAINT FOR DECLARATORY  
RELIEF, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF, DECLARATION  
OF KIMBERLY MIERA AND ACCOMPANYING EXHIBITS IN SUPPORT THEREOF**

1 [ ] **BY MESSENGER SERVICE:** I served the documents by placing them in an  
2 envelope or package addressed to the persons listed above and providing them to a  
3 professional messenger service for service.

4 [ ] **BY PERSONAL SERVICE:** I served the documents by placing them in an  
5 envelope or package addressed to the persons listed above and providing them personally to  
6 parties.

7 [ ] **BY FAX TRANSMISSION:** Based on an agreement of the parties to accept  
8 service by fax transmission, I faxed the documents to the persons at the fax numbers listed  
9 above. No error was reported by the fax machine that I used. A copy of the record of the fax  
10 transmission, which I printed out, is attached.

11 And:

12 Steve J. Reyes  
13 Kaufman Legal Group  
14 777 S. Figueroa Street, Suite 4050  
15 Los Angeles, CA 90017-5864

16 Attorney for Record for Defendants  
17 Michael Weinstein and Arlette de la Cruz

18 Email: sreyes@kaufmanlegalgroup.com

19 [ x ] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the  
20 parties to accept service by electronic transmission, I caused the documents to be sent to the  
21 persons at the electronic notification addresses listed above. I did not receive, within a  
22 reasonable time after the transmission, any electronic message or other indication that the  
23 transmission was unsuccessful.

24 I declare under penalty of perjury under the laws of the State of California that the  
25 foregoing is true and correct.

26 Dated: December 23, 2011

27   
28 ATHENA CHENOWETH

# Attachment 2

**ORDINANCE NO. \_\_\_\_\_**

An ordinance proposed by initiative petition requiring City film permits for commercial production of adult films to be conditioned on certain work practice controls, including the required use of condoms.

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

**CITY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT**

Section 1. Title.

This ordinance shall be known and may be cited as the City of Los Angeles Safer Sex In The Adult Film Industry Act.

Sec. 2. Findings and Declaration.

The people of the City of Los Angeles hereby find and declare all of the following:

(a) The HIV/AIDS crisis, and the ongoing epidemic of sexually transmitted infections as a result of the making of adult films, has caused a negative impact on public health and the quality of life of citizens living in Los Angeles.

(b) Safer sex practices are a prime method of preventing and reducing the spread of HIV/AIDS and other sexually transmitted infections.

(c) The Los Angeles County Department of Public Health has documented widespread transmission of sexually transmitted infections associated with the activities of the adult film industry within the City of Los Angeles.

(d) The Los Angeles County Department of Public Health has opined that the use of condoms is the best and most effective way to stem the spread of sexually transmitted infections within the adult film industry.

(e) Multiple organizations committed to protecting the public health have called for mandatory use of condoms in the production of adult films, including the American Medical Association, the American Public Health Association, the California Conference of Local AIDS Directors, the California STD Controllers Association, the National Coalition of STD Directors, the National Association of City and County Health Officials, AIDS Healthcare Foundation and the California Medical Association.

(f) Producers of adult films are required by California Code of Regulations Title 8, Section 5193 to use barrier protection, including condoms, to protect employees during the production of adult films.

(g) Many producers of adult films in Los Angeles consistently violate the worker safety provisions of California Code of Regulations Title 8, section 5193.

(h) Pursuant to Section 12.22(A)(13) of the Los Angeles Planning and Zoning Code, producers of all films within the City of Los Angeles, including adult films, are required to obtain film permits. Permits issued pursuant to Section 12.22(A)(13) may contain conditions "consistent with public health, safety and general welfare."

(i) Permits for adult films are currently conditioned with language stating "INTERIOR AND EXTERIOR NUDDITY OR SEXUAL ACTIVITY MUST NOT BE VISIBLE OR AUDIBLE BY THE PUBLIC."

(j) The City or any person or entity acting on its behalf to issue or process film permits may charge permittees fees in conjunction with the issuance of film permits. Such fees may include fees to provide for inspectors to ensure compliance with conditions on film permits.

### Sec. 3. Purpose and Intent.

The people of the City of Los Angeles hereby declare their purpose and intent in enacting this ordinance to be to minimize the spread of sexually transmitted infections resulting from the production of adult films in the City of Los Angeles, which have caused a negative impact on public health and the quality of life of citizens living in Los Angeles.

Sec. 4. Section 12.22.1 is hereby added to the Los Angeles Municipal Code to read as follows:

#### **SECTION 12.22.1. SAFER SEX.**

#### **SAFER SEX; SHORT TITLE AND PUBLIC POLICY**

#### **SEC. 12.22.1(A). Short Title.**

This ordinance shall be known as the City of Los Angeles Safer Sex In The Adult Film Industry Act.

#### **SEC. 12.22.1(B). Use of Condoms In The Making of Adult Films.**

(1) An "adult film" is defined as any film, video, multimedia or other representation 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 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) "Producer of adult film" is defined as any person or entity directly engaged in the creation of adult films.

(3) "Filmed" and "filming" refer to the recording of any adult film, regardless of media.

(4) All producers of adult films issued permits 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 are required to maintain engineering and work practice controls sufficient to protect employees from exposure to blood and/or any other potentially infectious materials controls consistent with California Code of Regulations, Title 8, Section 5193. Engineering and work practice controls include, but are not limited to:

(a) Simulation of sex acts using acting, production and post-production techniques;

(b) Ejaculation outside workers' bodies;

(c) Provision of and required use of condoms whenever acts of vaginal or anal sex are performed during the production of an adult film; and

(d) The provision of condom-safe water-based or silicone-based lubricants to facilitate the use of condoms.

(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 an adult film must expressly condition said permit on compliance with subsection (4) of this section. Any such permit shall contain the following language: "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."

(6) The City shall charge, or shall direct any other person or entity contracting with the City to administer the film permitting process, to charge, entertainment industry customers seeking permits for the production of adult films a fee sufficient to allow periodic inspections to ensure compliance with the conditions set forth in Section 12.22.1(B)(4).

Sec. 5. Competing Measures.

In the event that this measure and another measure or measures relating to the permit process for adult films shall appear on the same ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other relating to the permit process for adult films shall be null and void.

Sec. 6. Amendment and Repeal.

This ordinance may be amended to further its purposes by ordinance passed by a majority vote of the Council and approved by the Mayor.

This ordinance may not be 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.

Sec. 7. Severability.

If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of the Act are severable.

Sec. 8. 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 the foregoing 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 \_\_\_\_\_

Date \_\_\_\_\_

File No. \_\_\_\_\_

# Attachment 3

**RESOLUTION**

**WHEREAS**, the Council of the City of Los Angeles has taken action pursuant to an initiative petition to place a certain initiative ordinance before the qualified voters of the City of Los Angeles at the June 5, 2012 Special Election to be consolidated with the State Primary Election to be held on the same date; and

**WHEREAS**, the City Election Code requires the City Attorney to prepare and present a ballot title and question consisting of an impartial statement of the measure; and

**WHEREAS**, the City Attorney has presented the following ballot title and question for the proposed measure:

**ADULT FILM INDUSTRY; USE OF CONDOMS; FILM PERMITS.  
INITIATIVE ORDINANCE \_\_\_\_.**

Shall an ordinance requiring any person issued a City of Los Angeles film permit for commercial production of an adult film to require the use of condoms and maintain other controls related to employee exposure to blood or infectious materials, and requiring the City to condition film permits on compliance with this requirement and charge adult film permit applicants fees to pay for periodic inspections, be adopted?

**NOW, THEREFORE, BE IT RESOLVED** that the ballot title and question presented by the City Attorney be adopted by the City Council.

I hereby certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting held on \_\_\_\_\_.

JUNE LAGMAY, City Clerk

By \_\_\_\_\_  
Deputy

C.F. No. \_\_\_\_\_

**RESOLUTION**

Resolution providing that an initiative ordinance be submitted to the qualified voters of the City of Los Angeles.

**BE IT RESOLVED BY THE COUNCIL OF THE  
CITY OF LOS ANGELES AS FOLLOWS:**

Section A. The following initiative ordinance of the City of Los Angeles is hereby proposed to be submitted for approval by a majority of the qualified voters of the City of Los Angeles at a Special Election to be called on June 5, 2012 and consolidated with the State Primary Election to be held on the same date:

**ORDINANCE NO. \_\_\_\_\_**

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

**CITY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT**

Section 1. Title.

This ordinance shall be known and may be cited as the City of Los Angeles Safer Sex In The Adult Film Industry Act.

Sec. 2. Findings and Declaration.

The people of the City of Los Angeles hereby find and declare all of the following:

(a) The HIV/AIDS crisis, and the ongoing epidemic of sexually transmitted infections as a result of the making of adult films, has caused a negative impact on public health and the quality of life of citizens living in Los Angeles.

(b) Safer sex practices are a prime method of preventing and reducing the spread of HIV/AIDS and other sexually transmitted infections.

(c) The Los Angeles County Department of Public Health has documented widespread transmission of sexually transmitted infections associated with the activities of the adult film industry within the City of Los Angeles.

(d) The Los Angeles County Department of Public Health has opined that the use of condoms is the best and most effective way to stem the spread of sexually transmitted infections within the adult film industry.

(e) Multiple organizations committed to protecting the public health have called for mandatory use of condoms in the production of adult films, including the American Medical Association, the American Public Health Association, the California Conference of Local AIDS Directors, the California STD Controllers Association, the National Coalition of STD Directors, the National Association of City and County Health Officials, AIDS Healthcare Foundation and the California Medical Association.

(f) Producers of adult films are required by California Code of Regulations Title 8, Section 5193 to use barrier protection, including condoms, to protect employees during the production of adult films.

(g) Many producers of adult films in Los Angeles consistently violate the worker safety provisions of California Code of Regulations Title 8, section 5193.

(h) Pursuant to Section 12.22(A)(13) of the Los Angeles Planning and Zoning Code, producers of all films within the City of Los Angeles, including adult films, are required to obtain film permits. Permits issued pursuant to Section 12.22(A)(13) may contain conditions "consistent with public health, safety and general welfare."

(i) Permits for adult films are currently conditioned with language stating "INTERIOR AND EXTERIOR NUDDITY OR SEXUAL ACTIVITY MUST NOT BE VISIBLE OR AUDIBLE BY THE PUBLIC."

(j) The City or any person or entity acting on its behalf to issue or process film permits may charge permittees fees in conjunction with the issuance of film permits. Such fees may include fees to provide for inspectors to ensure compliance with conditions on film permits.

### Sec. 3. Purpose and Intent.

The people of the City of Los Angeles hereby declare their purpose and intent in enacting this ordinance to be to minimize the spread of sexually transmitted infections resulting from the production of adult films in the City of Los Angeles, which have caused a negative impact on public health and the quality of life of citizens living in Los Angeles.

Sec. 4. Section 12.22.1 is hereby added to the Los Angeles Municipal Code to read as follows:

#### **SECTION 12.22.1. SAFER SEX.**

#### **SAFER SEX; SHORT TITLE AND PUBLIC POLICY**

**SEC. 12.22.1(A). Short Title.**

This ordinance shall be known as the City of Los Angeles Safer Sex In The Adult Film Industry Act.

**SEC. 12.22.1(B). Use of Condoms In The Making of Adult Films.**

(1) An "adult film" is defined as any film, video, multimedia or other representation 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 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) "Producer of adult film" is defined as any person or entity directly engaged in the creation of adult films.

(3) "Filmed" and "filming" refer to the recording of any adult film, regardless of media.

(4) All producers of adult films issued permits 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 are required to maintain engineering and work practice controls sufficient to protect employees from exposure to blood and/or any other potentially infectious materials controls consistent with California Code of Regulations, Title 8, Section 5193. Engineering and work practice controls include, but are not limited to:

(a) Simulation of sex acts using acting, production and post-production techniques;

(b) Ejaculation outside workers' bodies;

(c) Provision of and required use of condoms whenever acts of vaginal or anal sex are performed during the production of an adult film; and

(d) The provision of condom-safe water-based or silicone-based lubricants to facilitate the use of condoms.

(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 an adult film must expressly condition said permit on

compliance with subsection (4) of this section. Any such permit shall contain the following language: "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."

(6) The City shall charge, or shall direct any other person or entity contracting with the City to administer the film permitting process, to charge, entertainment industry customers seeking permits for the production of adult films a fee sufficient to allow periodic inspections to ensure compliance with the conditions set forth in Section 12.22.1(B)(4).

#### Sec. 5. Competing Measures.

In the event that this measure and another measure or measures relating to the permit process for adult films shall appear on the same ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other relating to the permit process for adult films shall be null and void.

#### Sec. 6. Amendment and Repeal.

This ordinance may be amended to further its purposes by ordinance passed by a majority vote of the Council and approved by the Mayor.

This ordinance may not be 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.

#### Sec. 7. Severability.

If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of the Act are severable.

Sec. B. The City Clerk is hereby authorized and directed to publish a notice containing the proposed ballot measure, specifying the date of June 5, 2012 as the date the measure is to be voted upon by the qualified voters of the City of Los Angeles. The notice shall be published once in a newspaper of general circulation in the City of Los Angeles, and in each edition thereof during that day of publication. The City Clerk is authorized and directed to prepare and keep in the City Clerk's office a sufficient supply of copies of the proposed ballot measure and to distribute the proposed ballot measure to any and all persons requesting a copy. Further, the City Clerk is authorized and directed to mail copies of the proposed ballot measure to each of the qualified voters of the City of Los Angeles.

Sec. C. The City Clerk is hereby authorized and directed to cause a notice to be published once in a newspaper of general circulation that copies of voter information pamphlets containing the proposed ballot measure may be obtained upon request in the City Clerk's office.

Sec. D. The City Clerk shall file a duly certified copy of this Resolution forthwith with the Board of Supervisors and with the Registrar-Recorder of the County of Los Angeles.

I hereby certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting held on \_\_\_\_\_.

JUNE LAGMAY, City Clerk

By \_\_\_\_\_  
Deputy

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By \_\_\_\_\_

Date \_\_\_\_\_

C.F. No. \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

An ordinance calling a Special Election to be held on Tuesday, June 5, 2012 for the purpose of submitting to the qualified voters of the City of Los Angeles a certain initiative ordinance and to consolidate this Special Election with the State Primary Election to be held on the same date.

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

Section 1. A Special Election is hereby called to be held in the City of Los Angeles on June 5, 2012, for the purpose of submitting to the qualified voters of the City a certain initiative ordinance ordered to be placed on the ballot by the Council of the City of Los Angeles pursuant to an initiative petition.

Sec. 2. The ballot title and question to be used at the Special Election for the initiative ordinance to be submitted to the qualified voters of the City of Los Angeles shall be:

**ADULT FILM INDUSTRY; USE OF CONDOMS; FILM PERMITS.  
INITIATIVE ORDINANCE \_\_\_\_.**

Shall an ordinance requiring any person issued a City of Los Angeles film permit for commercial production of an adult film to require the use of condoms and maintain other controls related to employee exposure to blood or infectious materials, and requiring the City to condition film permits on compliance with this requirement and charge adult film permit applicants fees to pay for periodic inspections, be adopted?

Sec. 3. The initiative ordinance shall be designated on the ballot or ballot pages by a letter or number by the City Council in accordance with applicable City and state laws. Upon the designation by the proper officials of the letter or number to be assigned to the initiative ordinance, that letter or number is hereby adopted and shall be the designation for the ballot title.

Sec. 4. To vote on the initiative ordinance, the voter shall mark the ballot next to the word "Yes" or the word "No." A "Yes" vote shall be counted in favor of adoption of the initiative ordinance and a "No" vote shall be counted against adoption of the initiative ordinance.

Sec. 5. The Special Election hereby called shall be, and hereby is ordered to be, consolidated with the State Primary Election to be held in the City of Los Angeles on Tuesday, June 5, 2012.

Sec. 6. The voting polls on election day shall open at 7:00 a.m., June 5, 2012, and shall remain open until 8:00 p.m. of the same day when the voting polls shall be closed, except as provided in California Elections Code Section 14401.

Sec. 7. The election precincts, polling places, and officers of election for the Special Election shall be the same as those provided in the City of Los Angeles for the State Primary Election, and the election shall be held in all respects as if there were only one election. Furthermore, for the precincts, polling places, and officers of election, reference is hereby made to the Order of the Registrar-Recorder of the County of Los Angeles to be adopted for the State Primary Election and that Order is incorporated into and made part of this ordinance.

Sec. 8. In all other particulars, the Special Election shall be held and conducted as provided by law for holding of the State Primary Election in the City of Los Angeles. The Board of Supervisors of the County of Los Angeles shall have authority to canvass the returns of the Special Election, and the City Council of the City of Los Angeles upon receipt of the certified results of the canvass of election returns shall declare the results thereof.

Sec. 9. 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 \_\_\_\_\_

Date \_\_\_\_\_

File No. \_\_\_\_\_