

ORDINANCE NO. 1105

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAMARILLO, CALIFORNIA, ADDING CHAPTER 9.22 (SAFER SEX IN THE ADULT FILM INDUSTRY) TO TITLE 9 (HEALTH AND SAFETY) OF THE CAMARILLO MUNICIPAL CODE, ESTABLISHING PERMITS FOR THE PRODUCTION OF ADULT FILMS WITHIN THE CITY

The City Council of the City of Camarillo ordains as follows:

SECTION 1. Findings. The City Council finds as follows:

A. The City has enacted a moratorium on the issuance of any new use permit, conditional use permit, special event permit, or film permit for the production of adult films within the City, which is set to expire on March 23, 2015.

B. Title 19 (Zoning) of the Camarillo Municipal Code (CMC) permits motion picture studios and temporary movie sets as permitted uses or conditionally permitted uses in a number of residential and commercial zones including the R-E, R-C, O-S, L-M, M-1, and M-2 zones.

C. Temporary commercial filming is also permitted in a number of residential and commercial zones including the R-E, R-1, RPD, M-1, M-2 and L-M zones with the approval of a special event and/or film permit under CMC Chapter 19.63 of Title 19.

D. Although the conditional use permit and special event/film permit provisions of Title 19 authorize the imposition of conditions deemed necessary to protect the public health, safety and general welfare, these provisions, along with the City's standard use permit provisions, do not currently contain specific regulations regarding the work place conditions of performers in film productions, specifically those who perform in adult film productions.

E. The Los Angeles metropolitan area serves as the base for a significant segment of the adult film industry in the United States with approximately 200 production companies employing over 1000 performers and over 5000 other workers.

F. According to the Los Angeles County Department of Public Health, since 2004, 2,378 people who identified themselves as adult film industry performers have tested positive for chlamydia, and an additional 1,357 tested positive for gonorrhea and 15 for syphilis. There have also been a number of reported cases of HIV involving persons associated with the adult film industry.

G. A July 2011 study completed for the Sexually Transmitted Disease Program of the Los Angeles County Department of Public Health concluded that chlamydia and gonorrhea infections are common and recurrent among adult film performers, and that control strategies, including promotion of condom use, are needed to protect workers in the adult film industry, as testing alone will not effectively prevent workplace acquisition and transmission. According to the study, additional legislation that places more responsibility on the production companies is needed to ensure the safety and health of adult film performers.

H. In January 2012, the City Council of the City of Los Angeles adopted an ordinance known as the "City of Los Angeles Safer Sex In The Adult Film Industry Act." Among other things,

the ordinance requires producers of adult films that are issued a city film permit to implement safe sex work place controls, including the use of condoms by performers whenever sex acts are performed in the course of producing an adult film.

I. In May 2012, the City Council of the City of Simi Valley adopted Chapter 6-14 of the Simi Valley Municipal Code entitled the "Safer Sex in the Adult Film Industry Ordinance." The ordinance is similar to the City of Los Angeles ordinance, but added some additional requirements such as requiring the posting of a copy of the ordinance at adult film locations, and authorizing staff to inspect such locations for compliance with the ordinance.

J. In November 2012, voters in Los Angeles County approved Ballot Measure B ("Safer Sex In The Adult Film Industry Act"), which, among other things, imposes a public health permit requirement on producers of adult films and requires such producers to complete a blood borne pathogen training course, and also requires performers of sex acts to use condoms. The Act also requires the posting at adult film locations of a sign stating that the use of condoms is required for sex acts during the production of adult films to protect performers from sexually transmitted infections.

K. In May 2013, the Ventura County Board of Supervisors adopted Chapter 10 of Division 4 of the Ventura County Ordinance Code entitled "Safer Sex in the Adult Film Industry Ordinance." The ordinance is similar to the Simi Valley ordinance, however, it only applies within the unincorporated areas of Ventura County.

L. According to national news reports, during the period between 2013 through 2014, the adult film industry enacted three self-imposed filming moratoriums in response to reports of HIV-positive results for various adult film performers.

M. Prior to the adoption of the moratorium, the City had experienced increased interest in permits for the filming of adult films within the City, and some of the inquiries specifically asked whether the City had adopted a "condom ordinance" similar to that of the City of Los Angeles and the County of Los Angeles.

N. According to Film LA, the non-profit organization that processes permits for motion picture, television and commercial production throughout Los Angeles, applications for permits from the adult film industry dropped an estimated 500 film permits annually to only two during the year following the County's enactment of Ballot Measure B.

O. The inquiries received by the City along with the drastic reduction in adult film permits issued in the Los Angeles area have raised concerns that adult film production companies may be seeking to relocate production to outlying areas in order to avoid the new adult film regulations enacted within Los Angeles County and the City of Los Angeles.

P. The California Division of Occupational Safety and Health ("Cal/OSHA") has jurisdiction over "places of employment" and may supervise employer-employee relationships. (Labor Code § 6307). Moreover, the California Occupational Safety and Health Standards Board has adopted a general purpose regulation that applies to adult film production as well as other places of employment, which requires the use of condoms on adult film locations that are within Cal/OSHA's jurisdiction. (Title 8, California Code of Regulations § 5193).

Q. In response to an inquiry by the City of Los Angeles, Cal/OSHA opined that State law does not pre-empt local film permit conditions that would protect public health and safety and

specifically, that would require adult film actors to wear condoms, because such local conditions do 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.

R. Despite Cal/OSHA's determination that the type of regulations in the City of Los Angeles' Safer Sex in the Adult Film Industry Act were not pre-empted by State law, an adult film company and certain adult film performers challenged Measure B in a lawsuit filed in the United States District Court for the Central District of California, and appealed to the Ninth Circuit Court of Appeals. Both the District Court and Court of Appeals held that certain portions of Measure B's permitting procedures and administrative search provisions were unconstitutional, but that the basic requirement for adult film performers to wear condoms was valid.

S. Based on the above findings, the City Council desires to enact an ordinance similar to those enacted in other local jurisdictions to promote safer sex in the adult film industry, which would require a specific adult film permit for any adult film production that occurs within the City. Among other requirements, the proposed ordinance would require that adult film performers must wear condoms during the production of all adult films within the City.

SECTION 2. Environmental Review. The City Council exercises its independent judgment and finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the subject regulations have no potential for resulting in any significant physical change to the environment, directly or indirectly.

SECTION 3. Addition of Chapter 9.22. Chapter 9.22 (Safer Sex in the Adult Film Industry) is hereby added to Title 9 (Health and Safety) of the Camarillo Municipal Code, as set forth in Exhibit A attached to this ordinance and incorporated by this reference.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED March 11, 2015.

Mayor

Attested to on _____.

City Clerk

I, Jeffrie Madland, City Clerk of the City of Camarillo, certify Ordinance No. 1105 was introduced by the City Council at a meeting held February 25, 2015, and subsequently passed and adopted by the City Council at a regular meeting held March 11, 2015, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

City Clerk

EXHIBIT A

Chapter 9.22 - SAFER SEX IN THE ADULT FILM INDUSTRY

9.22.010 Title.

This chapter will be known as the "Safer Sex in the Adult Film Industry Ordinance."

9.22.020 Findings and declarations.

The city council finds and declares as follows:

- (a) The HIV/AIDS crisis and the ongoing epidemic of sexually transmitted diseases, to which the making of adult films has contributed, have negatively affected public health and the quality of life of residents of the city.
- (b) Safer sex practices can prevent and reduce the spread of HIV/AIDS and other sexually transmitted diseases.
- (c) Public health research has documented widespread transmission of sexually transmitted diseases by unprotected sexual activity such as occurs in the adult film industry in the metropolitan Los Angeles area.
- (d) The use of condoms and other biological barriers is the best and most effective way to stem the spread of sexually transmitted infections in the adult film industry.
- (e) Several 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, the 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 and it is the intent of this chapter to discourage violations of those standards without duplicating or contradicting them as permitted by such cases as *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277 and *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383.
- (g) Many producers of adult films in the metropolitan Los Angeles region have been found to consistently violate the worker safety provisions of California Code of Regulations Title 8, Section 5193.
- (h) Recent efforts to promote safer sex in the adult film industry in Los Angeles County and Ventura County have caused producers of adult films to seek out filming locations in areas of the city, creating a threat to public health and safety.

9.22.030 Purpose and intent.

The purpose and intent of this chapter is to minimize the spread of HIV/AIDS and other sexually transmitted diseases in the production of adult films in the city.

9.22.040 Definitions.

Unless the context demonstrates another meaning was intended, the following definitions apply to the construction of this chapter:

- (a) "Adult film" means any commercial film, video, multimedia or other representation

(including live theater) of sexual penetration or oral sex, but excludes representations of simulations of such conduct under circumstances in which the sexual transmission of infectious disease is not foreseeable.

- (b) "Applicant" means a person who applies for a permit pursuant to Section 9.22.050.
- (c) "Business day" means a day when City Hall is open to the public for the conduct of city business.
- (d) "Commercial" as applied to an adult film means either that: (1) the filming is intended to be or is remunerated by sale of adult films, advertising, or otherwise or (2) any person is compensated for services as a performer or for other services in production of the adult film, including but not limited to cameramen, sound artists, film editors, lighting artists, electricians, carpenters, and greensmen.
- (e) "Director" means the Community Development Director of the city or the director's designee.
- (f) "Filming" means the production of any adult film and includes the conduct identified in subsection (j) of this section.
- (g) "Oral sex" means conduct by which a performer makes oral contact with the anus or genitals of another performer.
- (h) "Performer" means any person who engages in sexual penetration or oral sex in the filming of an adult film as one or more of the following: (1) the penetrator, (2) the one penetrated, (3) the person who makes oral contact or (4) the person who is the object of such contact.
- (i) "Permittee" means a person issued a permit pursuant to Section 9.22.050.
- (j) "Producer of adult film" means: (1) any person who compensates a performer to engage in sexual penetration or oral sex in the production of an adult film, and (2) any person engaged in the production of an adult film with authority to govern the workplace conduct of performers. "To produce an adult film" means to engage in conduct which makes one a producer of an adult film.
- (k) "Sexual penetration" means oral, vaginal, or anal penetration by a part of the human body or by an inanimate object.

9.22.050 Permit required.

- (a) No person may produce an adult film in the city without first obtaining a permit pursuant to this section.
- (b) The director will issue a permit under this section within five business days of receipt of a completed application on a form the director designates for that purpose unless the director determines on the basis of substantial evidence that one or more of the following is true:
 - (1) The applicant failed to provide the information requested on the application form or the information provided is false or intentionally misleading;
 - (2) The applicant failed to pay any fee lawfully established by the city for the issuance of such permits;

- (3) The applicant failed to acknowledge receipt of a copy of this chapter (which the director will provide) by signing where indicated on the application form or otherwise; or
- (4) The information provided on the application demonstrates that the activity for which the permit is requested would violate this code or other applicable law.
- (c) The application form designated by the director will only require information needed to reasonably demonstrate notice of and compliance with the requirements of this chapter and other provisions of this code. In particular, the application form will not inquire into the substantive content of an adult film other than as reasonably necessary to determine that the film is an adult film.
- (d) If the director denies a permit pursuant to paragraph (b) of this section, the director will give the applicant written notice of that denial and the reason(s) for it within five business days of the director's receipt of an application. Written notice directed to the applicant by any means possible in light of the information provided by the applicant, including personal delivery, mail, telecopier or facsimile, email, or other means likely to achieve actual notice, will be sufficient.
- (e) Denial of a permit under this section will be subject to judicial review pursuant to California Code of Civil Procedure Section 1094.8, as it may be amended.

9.22.060 Permit exceptions.

No permit under this chapter will be required for non-commercial activity or other conduct within the scope of the privacy rights afforded by the Constitutions of the United States or of California.

9.22.070 Condom requirement.

Performers and producers of adult films, as applicable, will comply with the following requirements:

- (a) Condoms or dental dams will be used in the production of every adult film in the city in every instance of oral sex and in every instance of sexual penetration.
- (b) Condoms used in the production of an adult film in the city will be lubricated with a condom-safe water- or silicone-based lubricant.
- (c) An adequate supply of condoms and dental dams will be made available at the filming location of an adult film in the city at no cost to performers.

9.22.080 Additional requirements.

Any adult film permit issued under this chapter will expressly condition the permit on the following:

- (a) The permit will abide by all applicable health and safety regulations, including the worker safety provisions of California Code of Regulations Title 8, Section 5193 and the condom requirements stated in Section 9.22.070.
- (b) The permittee must post a copy of the permit and this chapter at every site where production of an adult film depicting sexual penetration or oral sex takes place and maintain it in a place easily visible to all performers while production takes place there. In addition, a legible sign must be displayed at all times at the location where any adult film is filmed in any conventional typeface with a font size not smaller than 36 points, that provides the following notice so as to be clearly visible to all performers:

"The use of condoms is required for all acts of anal, oral, or vaginal sex during the production of adult films to protect performers from sexually transmitted infections.

Any public health concerns regarding any activities occurring during the production of any adult films should be directed to:

City of Camarillo
Department of Community Development
601 Carmen Drive
Camarillo, CA 93010
(805) 388-5360"

- (c) Upon written request of the director on the basis of a complaint that provides a reasonable basis to believe such inspection is necessary, a permittee will: (1) permit the Ventura County sheriff's department or other person designated by the director to review all film or other media evidencing sexual penetration or oral sex in the production of an adult film in the city whether or not the film or media is included in an edited version of the adult film, and (2) allow the Ventura County sheriff's department or other person designated by the director to inspect, during production or otherwise, any site at which sexual penetration or oral sex in the production of an adult film takes place to ensure compliance with the requirements of this chapter.
- (d) An adult film permit issued under this chapter may not be transferred, assigned, or used by any person other than the permittee.

9.22.090 Adult film permit application fees.

The city council may from time to time adopt a resolution establishing fees necessary to recover the costs of processing adult film permit applications.

9.22.100 Violations.

Violation of any provision of this chapter or of any condition of a permit imposed by this chapter will be punishable, and may be remedied, in any of the means stated in Title 1 of this code or otherwise authorized by law.