COUNTY OF LOS ANGELES
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July 23, 2012

TO: Each Supervisor

FROM: for Jonathan E. Fielding, M.D., M.P.H.
Director and Health Officer

SUBJECT: **SAFER SEX IN THE ADULT FILM INDUSTRY BALLOT INITIATIVE (Agenda Item #15 for the Board Meeting of July 24, 2012)**

This is in response to your Board's July 10, 2012 consideration of the Safer Sex in the Adult Film Industry ballot initiative. At that meeting, your Board directed the Department of Public Health (DPH) to respond to a range of questions raised by your Board and to assess potential implications for enforcing a mandatory condom policy in the adult film industry. This memorandum does not address the legal issues raised by your Board; these will be addressed by County Counsel under a separate memorandum.

Preliminary Implementation Approach

Based on a review of the ballot initiative, DPH has preliminarily developed the following implementation approach. The measure establishes two types of permits: a required Public Health Permit to be issued by DPH, and an on-location permit possibly issued by a city, the County, or another entity such as Film LA.

Public Health Permit

- The Public Health Permit application would include the required elements of an Exposure Control Plan, staff training, and payment of the Permit fee.
- A film company would have to attest and maintain documentation that it was in compliance with the condom mandate and relevant staff have taken the required training.
- Training would need to be accomplished via a DPH-approved training entity. Similarly, the included Exposure Control Plan and documentation would also be subject to review at any time.

Film Permit

- While the proposed measure specifies a requirement for an on-location film permit, the implementation of this provision is not clear as on-location activities relate to conditions a given city or the unincorporated area place on such activities broadly. For instance, some cities may not require on-location permit while others may have specific conditions. Because there are no uniform on-location permit conditions across the County and cities, implementation of this provision would likely require focused discussions with cities.
- At least for the unincorporated area, the County would need to identify an existing entity or create new administrative infrastructure to issue on-location Film Permits.

Monitoring and Enforcement

- DPH Public Health Investigators (PHIs) would be trained and deployed to conduct random checks to ensure compliance (frequency to be determined) with issued Public Health Permits.
- DPH would maintain a phone line to field complaints and reports of violations.
- DPH PHIs would follow up on complaints that warrant further inspection.
- Violations would be addressed in one or a combination of ways including: permit revocation or suspension; penalty assessment; order of a plan of correction; confiscation and storage of equipment; and an administrative review proceeding.

Challenges to Compliance

The ballot measure's effectiveness will be a challenge with respect to compliance as there are few options to identify and require underground, inconspicuous, intentionally non-compliant filmmakers to obtain permits. While it is likely that there will be adult filming conducted without a permits, larger adult film production companies may be more motivated to secure a permits for insurance or other business purposes.

On multiple occasions, there have been broad comparisons made of the adult film industry to the mobile food industry, in particular as it relates to permitting and enforcement with established operating standards. There are key differences to be made: 1) In the highly competitive mobile food industry, competitors will often report non-compliant food vendors, giving enforcement authorities information to identify or otherwise track their location; and 2) Mobile food vendors through both social and traditional media consistently and quite publicly share information on their location in order to draw customers (and many disclose this information in advance).

Conversely, adult film producers do not publicly disclose their intended film location in advance and are difficult to be identified by competitors, thus limiting the ability to locate and inspect them. The by-product of the film production (the film) is not released until months or even years after the film shoot takes place, highlighting the enforcement difficulties with respect to the adult film industry.

Additionally, we understand from several years of illegal food vendor (i.e. unpermitted food carts) enforcement that confiscating equipment has not proven to be entirely successful given the relative ease to re-establish activities. As such, imposing fines and confiscating the equipment of non-compliant adult film producers may not result in films being produced in full compliance with a mandatory condom use ordinance.

Preliminary Cost Analysis

There would be significant startup costs to DPH regardless of the level of compliance with the ballot measure and the number of Public Health Permits reviewed and issued. Although there are cost recovery provisions in the ballot measure, the County may face unfunded costs due to an unknown but potentially large complaint volume that could occur from segments of the industry that are un-permitted.

Among the range of activities and infrastructure needed are: training and curriculum development and ongoing review; permitting processes; administrative review; database maintenance; inspections; warm-line staffing and complaint follow-up; fine assessments, appeals processes, and administrative review procedures; confiscation, law enforcement engagement, and evidence warehousing activities and infrastructure, etc.

Based on a preliminary cost analysis the establishment of an Adult Film Public Health Permit Office would at a minimum require approximately $291,466 not including potential additional costs associated with confiscation, law enforcement involvement, and administrative and appeal proceedings. Because the ordinance proposes a two-year permit, the two-year costs are estimated to be $582,932.

If 10 Public Health Permits were issued, the two-year costs translate into a fee of $58,294 per permit. Alternatively, if 50 Permits are issued, the per permit fee would be $11,658. Because actual permit volume is unknown at this time, DPH will need to make a volume estimate for purposes of establishing the initial fee and make adjustments thereafter, as is done with other Public Health Permits.

In the event that all or nearly all of the estimated 200 adult film production companies operating in Los Angeles County solicit a Public Health Permit, the cost per permit would decline. The decrease in the Public Health Permit fee would be tempered, however, by additional operating expenses associated with an increased volume in applications and related monitoring and enforcement activities

Attached is a preliminary Public Health Permit cost and fee worksheet. Note this does not include costs associated with on-location permits.

Performer Complaints

Finally, and as part of the questions outlined by your Board related to any current complaints from actors or actresses in the adult film industry, we have no record of complaints filed directly with our Department. We have made referrals based on disease case reports to the California Division of Occupational Safety and Health (CalOSHA), the entity with jurisdiction over California blood-borne pathogen protection standards and workplace safety regulations.

If you have any questions or require additional information, please let me know.

JEF:kb
PH:1207:001

Attachment

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

LOS ANGELES COUNTY – DEPARTMENT OF PUBLIC HEALTH

PRELIMINARY PUBLIC HEALTH PERMIT COST AND FEE WORKSHEET
(does not include on-location film permit)

I. Costs based on 0-50 Public Health Permits per Year

A. Personnel

Administrative Assistant I, 1.0 FTE	$73,644
Public Health Investigator I, 1.0 FTE	$92,814
Sup. Public Health Investigator, 0.50 FTE	$54,208
Indirect Costs (15% of S&EB)	$33,100

Staff responsibilities (initial list):

- Staff the Public Health Permit Office; handle the public
- Application Review (3-5 hours/per application)
  - Review completeness
  - Manage Public Health Permit Database
  - Ensure training compliance
  - Process payment via Treasurer/Tax Collector
- Respond to complaints
- Conduct inspections
- Oversee administrative review and appeal proceedings
- Ensure appropriateness of blood-borne pathogen training curriculum
- Liaison with city governments and on-location film permitting authorities

B. Support Costs

Public Health Permit Administrative Office

Lease	$24,000
Office Equipment	$ 3,000
Computers	$ 6,000
Phone, Office Phone Line, Complaint Line	$ 1,200
Database establishment and maintenance	$ 2,500
Webpage development, inclusion into existing DPH page	$ 1,000

Additional Ordinance Enforcement Related Costs

Warehousing of equipment	TBD

C. Possible Additional Ancillary Personnel Costs

Law Enforcement Costs	TBD
Other Administrative Review and Appeal Costs	TBD

Preliminary Estimated Annual Total Operating Costs	**$291,466**
Preliminary Estimated Two-Year Total Operating Costs	**$582,932**

II. Preliminary Estimated Two-Year Permit Fees (range based on permit volume)

10 permits	$58,294 per permit
25 permits	$23,318 per permit
50 permits	$11,658 per permit

III. Additional Annual Variable Costs based on 51-200 Public Health Permits per year

Public Health Investigator I, 1.0 FTE	$92,814
Additional Law Enforcement Costs	TBD
Additional Administrative Review and Appeal Costs	TBD
Additional Confiscation and Warehousing Costs	TBD

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