

ORDINANCE NO. 1190

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF SIMI VALLEY REQUIRING PERMITS FOR THE  
PRODUCTION OF ADULT FILMS

THE CITY COUNCIL OF THE CITY OF SIMI VALLEY DOES ORDAIN  
AS FOLLOWS:

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

(a) The HIV / AIDS crisis and the ongoing epidemic of sexually transmitted diseases, to which the making of adult films contribute, have negatively affected public health and the quality of life of citizens living in Simi Valley.

(b) Safer sex practices can prevent and reduce the spread of HIV / AIDS and other sexually transmitted diseases.

(c) Several public health organizations 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.

SECTION 2. Title 6 of the Simi Valley Municipal Code is hereby amended to add a new Chapter 14 to read as follows:

**6-14.01 – Title.**

This Chapter shall be known as the Safer Sex in the Adult Film Industry Ordinance.

**6-14.02 – Findings and Declarations.**

The City Council of the City of Simi Valley hereby finds and declares all of the following:

(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 Simi Valley.

(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 ordinance 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 227 and *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4<sup>th</sup> 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.

#### **6-14.03 – Purpose and Intent.**

The City Council of the City of Simi Valley hereby declares that the purpose and intent of this ordinance is to minimize the spread of HIV / AIDS and other sexually transmitted diseases in the production of adult films in the City of Simi Valley.

#### **6-14.04 – Definitions.**

Unless the context demonstrates another meaning was intended, the following definitions, as well as those found in title 1 of this code, shall 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 6-14.05 of this chapter.

(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 (i) the filming is intended to be or is remunerated by sale of adult films, advertising, or otherwise or (ii) 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 Director of Administrative Services of the City and his or her deputies as provided by section 1-3.07 of this code.

(f) “Filming” shall mean the production of any adult film and includes the conduct identified in paragraph k) of this section below.

(g) “Oral sex” means conduct by which a performer makes oral contact with the anus or genitals of another performer.

(h) “Other appropriate means” means an alternative to the use of a condom or dental dam that is:

i. approved, in a writing maintained at the site(s) of the film-making in which the other appropriate means is employed, by a physician licensed by the State of California;

ii. reasonably likely to prevent the transmission of HIV / AIDS and other sexually transmitted diseases;

iii. compliant with applicable law;

iv. reported in writing to the Director by a producer of the adult filming in which the means is to be employed at least two business days before that means is employed; and

v. not employed after the Director has given written notice to the producer who makes a report pursuant to subparagraph iv. above that the means is, on the basis of substantial evidence cited in the notice and available for public inspection, not compliant with the requirements of this paragraph h). Such a notice shall be subject to judicial review pursuant to Code of Civil Procedure section 1094.8 as it now exists or is hereafter amended.

(i) “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: (i) the penetrator, (ii) the one penetrated, (iii) the person who makes oral contact or (iv) the person who is the object of such contact.

(j) “Permittee” means a person issued a permit pursuant to section 6-14.05 of this chapter.

(k) “Producer of adult film” means: (i) any person who compensates a performer to engage in sexual penetration or oral sex in the production of an adult film, and (iii) 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.

(l) “Sexual penetration” means oral, vaginal, or anal penetration by a part of the human body or by an inanimate object.

**6-14.05 – Permit required.**

(a) No person shall produce an adult film in the City without first obtaining a permit pursuant to this section.

(b) The Director shall issue a permit under this section within two business days of receipt of a completed application on a form he or she designates for that purpose unless he or she determines on the basis of substantial evidence that one or more of the following is true:

i. the applicant failed to provide the information requested on the application form or the information provided is false or intentionally misleading,

ii. the applicant failed to pay any fee lawfully established by the City for the issuance of such permits,

iii. the applicant failed to acknowledge receipt of a copy of this chapter (which the Director shall provide) by signing where indicated on the application form or otherwise, and / or

iv. the information provided on the application demonstrates that the activity for which the permit is requested would violate this code or other applicable law without respect to the content of the adult film to be produced.

(c) The application form designated by the Director shall be effective when notice of its content is given in the manner required for ordinances of the City and shall not require information not reasonably calculated to demonstrate notice of and compliance with the requirements of this chapter and other provisions of this code. In particular, the application form shall not inquire into the substantive content of an adult film other than as reasonably necessary to accomplish the objectives of this chapter.

(d) If the Director denies a permit pursuant to paragraph (b) of this section, he or she shall give the applicant written notice of that denial and the reason(s) for it within two business days of his or her receipt of an application. A writing 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, shall be sufficient.

(e) Denial of a permit under this section shall be subject to judicial review pursuant to Code of Civil Procedure section 1094.8 as it now exists or may hereafter be amended.

**6-14.06 – Permit exceptions.**

No permit under this ordinance shall 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.

**6-14.07 – Condom Requirement.**

Performers shall comply with the following requirements and producers shall require them to do so:

(a) Condoms, dental dams, or other appropriate means shall be used in the production of every adult film in the City in (i) every instance of oral sex and (ii) every instance of sexual penetration by a penis or otherwise under circumstances when transmission of disease is foreseeable.

(b) in every instance of sexual penetration or oral sex in the production of an adult film in the City.

(c) Every use of a condom in the production of an adult film in the City shall be lubricated with a condom-safe water- or silicone-based lubricant.

**6-14.08 – Additional Requirements.**

Any adult film permit issued under this Chapter shall expressly condition the permit on the following:

(a) That the permit contain substantially the following language: “Permittee must abide by all applicable health and safety regulations including the requirements for condom use stated in Chapter 6-14 of the Simi Valley Municipal Code. Permittee must post a copy of Chapter 6-14 of the Simi Valley Municipal Code 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 by all performers while production takes place there.”

(b) Upon written request of the Director on the basis of a complaint or other reasonable basis to believe such inspection is necessary, a permittee shall: (i) permit 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, (ii) allow 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, or (iii) both.

**6-14.09 – Adult Film Permit application fees.**

The City Council may from time to time establish fees to recover from permittees and applicants the costs authorized by Article XIII C, § 1, subdivision (e) of the California Constitution and other applicable law. Notice of such fees shall be given in the manner required for ordinances of the City.

**6-14.10 – Violations.**

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

SECTION 3. 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 4. Construction. It is the intent of this ordinance to protect public health by reducing the transmission of HIV / AIDS and other sexually transmitted diseases via sexual penetration or oral sex in the production of adult films in the City. To the extent this ordinance regulates expressive activity protected by the Constitutions of the United States or California, it is intended as a reasonable, content-neutral, time, place and manner restriction. This Ordinance shall be construed in light of this intent and its stated purposes.

SECTION 5. The City Clerk shall cause this ordinance or a summary hereof to be published in a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, in accordance with Section 36933 of the California Government Code; shall certify to the adoption of this ordinance and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.

SECTION 6. This ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED and ADOPTED this 23<sup>rd</sup> day of April 2012.

**Attest:**

/s/  
\_\_\_\_\_  
Wendy K. Green  
Assistant City Clerk

/s/  
\_\_\_\_\_  
Robert O. Huber, Mayor of the City of  
Simi Valley, California

**Approved as to Form:**

**Approved as to Content:**

/s/  
\_\_\_\_\_  
Marjorie Baxter, Interim City Attorney

/s/  
\_\_\_\_\_  
Mike Sedell, City Manager