

ORDINANCE NO. 882

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, CREATING CHAPTER 21, "FILM INDUSTRY" OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES; PROVIDING FOR THE REGULATION OF COMMERCIAL FILMING AND PHOTOGRAPHY THROUGH THE INSTITUTION OF A FILM PRODUCTION PERMITTING REQUIREMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council has determined that unregulated commercial film production and photography occurring within the Town may cause a nuisance and poses a threat to public safety; and

WHEREAS, the Town Council finds that it is in the best interest of the Town to regulate commercial filming and photography within the Town in order to protect the health, safety, welfare and well-being of the Town, its residents and the environment; and

WHEREAS, the Town Council desires to require all persons or entities seeking to engage in commercial film production or photography within the Town to obtain a Filming Permit.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. City Code Amended. That the Town Code is hereby amended by creating Article I "In General" of Chapter 21 "Film Industry", which shall read as follows:

CHAPTER 21 FILM PRODUCTION

ARTICLE I. IN GENERAL

Sec. 21-1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant includes an individual, firm, partnership, corporation, company or any other legal entity that has submitted an application for a Filming Permit.

Film Production means any and all still, live or motion picture production and related activities whether made on or by film, electronic tape or any other electronic device used to produce theatrical motion pictures, television entertainment motion pictures, industrial motion pictures, television commercials or still photography for use in any print or electronic media. Film Production shall include the erection, dismantling and transportation of the Production Equipment and the use of Production Vehicles.

Permittee means any Applicant to whom a Filming Permit is issued by the Town.

Permittee's Property means any real or personal property owned and controlled by the Permittee.

Production Crew means any and all persons who are in any way involved with or engaged in Film Production.

Production Location means any location within the Town at which Film Production is to take place.

Filming Permit means the permit required by this chapter.

Fire Department means the Miami-Dade County Fire Department.

Private Property means property located within the Town owned and controlled by a non-governmental entity.

Production Equipment means and includes any and all equipment utilized during Film Production which shall include, but not be limited to cameras, video recording devices, sound recording devices, lighting equipment, sound equipment, tracking, scaffolding, and cranes.

Production Vehicles means and includes any and all vehicles which are in any way utilized during Film Production including transporting the Production Crew to and from the Production Location which may include, but is not limited to campers, mobile homes, automobiles, trucks, trailers, vessels, motorcycles, helicopters and airplanes.

Property Owner means the owner of record of real property as recorded in the most recent tax rolls of Miami-Dade County.

Temporary Structure means and includes any and all structures assembled on or near a Production Location for the purpose of the Film Production.

Town Property means and includes any public street, sidewalk, park, recreational facility, building, water body or real or tangible property owned or controlled by the Town.

Sec. 21-2. Applicability.

This article shall apply to all property within the jurisdiction of the Town.

Sec. 21-3. Filming Permits.

- (a) *Permit required.* No person shall engage in, conduct or carry on Film Production on any Town Property or Private Property without first applying for and receiving a Filming Permit. A Filming Permit must be obtained authorizing Film Production at each Production Location notwithstanding that multiple Production Locations may be part of a single Film Production.
- (b) *Permit Application.* Applications for a Filming Permit shall be on a form provided by the Town and include:
 - (1) Name, address and phone number of the Applicant.
 - (2) A listing of the Production Location(s). If the Applicant is the Property Owner of the Production Location, the Town may require proof of ownership, in the form of a deed. If the Applicant is not the Property Owner of the Production Location, the Town may require the Property Owner to provide written consent for the Film Production as well as proof of ownership of the Production Location.
 - (3) A certificate of insurance demonstrating a current and active public liability insurance policy in an amount not less than \$1,000,000, which shall name the Town as an additional insured.
 - (4) The dates and times during which the Film Production is scheduled to occur.
 - (5) A description of the activities to take place during the proposed Film Production.
 - (6) A list of each Temporary Structure proposed which shall include proposed use, and placement and the dates and duration of each proposed placement. The erection of certain Temporary Structures may also require the approval of the Town Building Department.

- (7) Number and type of Production Vehicles and Production Equipment to be utilized, including a parking plan.
- (8) The size of the Production Crew.
- (9) Requests for closures of public streets or sidewalks and the proposed dates and necessary duration of such proposed closures.
- (10) A hold harmless agreement executed by the Applicant or authorized representative thereof in favor of the Town and in a form and substance approved by the Town Attorney.
- (11) Additional information as may be required by the Town Manager.

Sec. 21-4. Exemptions.

A Filming Permit shall not be required for the following activities:

- (a) *Current news.* Reporters, photographers or camerapersons in the employ of a newspaper, news service, television station or similar entity engaged in on-the-spot broadcasting of news events concerning those persons, scenes or occurrences in the news.
- (b) *Personal-family use.* The filming or videotaping of motion pictures or still photography created solely for personal-family use.
- (c) *Film Production conducted solely within the Permittee's Property.* Individuals engaging in Film Production solely within the Permittee's Property provided that:
 - (1) the Production Crew consists of two or fewer individuals; and
 - (2) all Production Vehicles and Production Equipment are situated on the Permittee's Property at all times excluding transport to and from the Permittee's Property. The Film Production requirements enumerated in section 21-5 shall apply.

Sec. 21-5. Film Production requirements.

The following requirements shall be imposed on all individuals engaged in Film Production.

- (a) Film Production shall not be permitted beyond the hours of 8:00 a.m. to 6:00 p.m. without the prior written approval of the Town Manager.
- (b) Waste and refuse disposal, as well as placement of portable toilet facilities shall be conducted in the manner directed by the Town Manager.
- (c) Any damage to Town Property or Private Property and landscaping shall be fully restored at the cost of the Permittee.
- (d) No Film Production may take place in violation of any Federal, State or local law, ordinance or regulation.
- (e) Electric generators and other equipment shall be located in the quietest or least obtrusive area. At no time shall the noise level resulting from Film Production violate provisions of Chapter 12 of the Town Code.
- (f) No member of a Production Crew shall trespass on any property adjacent to the Production Location for which the Filming Permit was granted.
- (g) Forty-eight hours prior to commencing Film Production, written notification shall be given to Property Owners within 375 feet from the edge of the property line of the Production Location stating that Film Production will take place and its duration.
- (h) Additional restrictions may be placed on Film Production if the Town Manager or the Town Council deems it necessary to protect the public health, safety or general welfare of the

community, its citizenry, and/or the environment of the Town or to enjoin what may constitute a public nuisance. Such restrictions may include the required use of police, fire and/or other Town personnel during the Film Production. The duty of a Permittee to employ members of the Police Department, Fire Department or other Town personnel shall be imposed at the discretion of the Town Manager.

Sec. 21-6. Filming Permit Fees;

(a) As a condition for issuance of a Filming Permit, the Permittee shall pay to the Town the applicable Filming Permit fees as follows:

- (1) \$200.00 per day for a Film Production involving less than 11 Production Crew members.
- (2) \$300.00 per day for a Film Production involving 11- 20 Production Crew members.
- (3) \$500.00 per day for a Film Production involving more than 20 Production Crew members.

(b) The issuance of a Filming Permit shall not operate to waive the Town's ability to impose any prescribed fees for the use of Town Property. The Permittee shall be required to pay the applicable charges and deposits, if any, as established by the Town for the use of the Town Property including but not limited to, parking fees.

Sec. 21-7. Permit criteria.

Upon submission of a fully completed application the Town Manager is authorized to grant a Filming Permit unless one of the following circumstances exist:

- (a) The Applicant has been convicted of a felony or a misdemeanor involving moral turpitude.
- (b) The Applicant has made a material misrepresentation in the Filming Permit application.
- (c) The proposed Film Production will substantially disrupt the peace and quiet within any area of the Town.
- (d) The proposed Film Production will have a substantial impact upon traffic within any area of the Town.
- (e) The proposed Film Production will have a negative impact upon the health, safety or welfare of the Town.
- (f) The Applicant is applying for renewal of a Filming Permit under circumstances where the Applicant has violated conditions of the previous Filming Permit or ordinances or regulations of the Town in the conduct of the Film Production or if, in the instance of successive shoots at the same Production Location, well founded complaints pertaining to noise, traffic, loitering, littering or trespass have been received by the Town from neighboring Property Owners.

Sec. 21-8. Denial; term; revocation or suspension.

(a) *Denial of permit.* Where the Filming Permit application is denied, the Applicant shall be notified in writing by mail of the denial within ten days.

(b) *Term.* Each Filming Permit shall clearly state the dates on which it is in effect.

(c) *Revocation or suspension.* A Filming Permit may be revoked or suspended for any of the following reasons:

- (1) A material false statement contained in the application;
- (2) Failure to comply with Federal, State or municipal laws, ordinances, orders and regulations as may be applicable;
- (3) Failure to comply with any conditions imposed by the Town on the issuance of the Filming Permit;

(4) Conducting the Film Production business or activity in a fraudulent or disorderly manner or in a manner which endangers the public health, safety, welfare or in any manner which disrupts the public peace.

Sec. 21-9. Penalty for violation of article.

Any person who violates the provisions of this article shall be subject to a fine of \$500.00 and revocation of the Filming Permit. Each day that a violation continues shall be deemed a separate violation. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

Sec. 21-10. Appeals.

Any person aggrieved by the decision not to issue a Filming Permit or by the revocation of a Filming Permit may, within ten days of the decision, appeal to the Town Council, whose decision shall be final.

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. That the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Bay Harbor Islands, Florida; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflict. That all ordinances or resolutions or parts of ordinances or resolutions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective upon adoption on second reading.

PASSED AND ADOPTED on first reading this 11th day of May, 2009.

PASSED AND ADOPTED on second reading this 8th day of June, 2009.

MAYOR

ATTEST:

TOWN CLERK