



CITY COUNCIL AGENDA REPORT

MEETING DATE: JULY 21, 2009

ITEM NUMBER:

SUBJECT: CODE AMENDMENT CO-09-06 TO TITLE 9, CHAPTER V, FILMING ACTIVITIES, OF THE COSTA MESA MUNICIPAL CODE

DATE: JULY 7, 2009

FROM: DEVELOPMENT SERVICES DEPT.

PRESENTATION BY: CLAIRE L. FLYNN, AICP, PLANNING ADMINISTRATOR
KIMBERLY BRANDT, ACTING DIRECTOR

FOR FURTHER INFORMATION CONTACT: CLAIRE FLYNN (714) 754-5278

RECOMMENDATION:

Give first reading to ordinance amending Title 9, Chapter V, Film Activities, of the Costa Mesa Municipal Code.

BACKGROUND:

Title 9 of the Costa Mesa Municipal Code provides a uniform set of regulations for outdoor filming activities. Regulations are in place to streamline the processing of film permits for outdoor events on public and private property. However, the Code is silent on requiring film permits for businesses or entities which have prior zoning approval for regular outdoor filming. It may be considered duplicative or unnecessary to require a separate film permit(s) if the discretionary zoning approval for outdoor filming had already been obtained by the organization.

ANALYSIS:

Proposed Title 9 Amendment

The purpose of the proposed Code amendment is to make one specific change to exempt the following organizations from the Title 9 film permit requirements:

- “any business, non-profit organization, and/or entity which has already obtained appropriate zoning approval (e.g. minor conditional use permit) from the city for regular outdoor filming activities.”

No other changes are proposed. This amendment would exempt entities with prior zoning approval for regular outdoor filming activities from the film permit requirements.

ENVIRONMENTAL DETERMINATION

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has

been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines.

ALTERNATIVES

City Council may consider the following options:

1. Give first reading to the Ordinance as recommended by staff.
2. Retain the City's existing film permit provisions and receive and file the report.

FISCAL REVIEW:

Fiscal review is not required for this item.

LEGAL REVIEW:

The City Attorney's office approved the attached resolution as to form.

CONCLUSION:

The purpose of the proposed Code amendment is to make one specific change that would exempt entities with prior zoning from the film permit requirements. No other changes are proposed.



CLAIRE FLYNN, AICP
Planning Administrator



KIMBERLY BRANDT, AICP
Acting Development Svcs. Director

- Attachments:
1. Ordinance
 2. Title 9, Chapter V, Filming Activities (for reference)

Distribution: City Manager
City Attorney
Acting Dev. Svcs. Director
City Clerk (2)
Staff (4)
File (2)

ORDINANCE NO. 09-___

AN ORDINANCE OF THE CITY COUNCIL OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-09-06 TO AMEND TITLE 9, CHAPTER V, FILMING ACTIVITIES, OF THE COSTA MESA MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: CODE AMENDMENT. Title 9 of the Costa Mesa Municipal Code is hereby amended as follows:

- a. Amend Chapter V, Section 9-473(b), by including the following changes shown in underlined and strike-out text:

"Sec. 9-473. Permit required.

(b) No person shall use any private property for the purpose of making commercial films without first applying for and receiving a permit from the city manager or his/her designee. Notwithstanding the foregoing, the provisions of this chapter shall not apply to or be construed to affect the following filming on private property:

1. Filming which requires no parking variances and uses no public property or rights-of-way on public property;
2. Filming which does not impair the quiet enjoyment of the surrounding properties;
3. Filming which does not involve the use of any pyrotechnic device as defined in California Health and Safety Code section 12526;
4. A licensed business which regularly employs a licensed pyrotechnic operator as defined in California Code of Regulations section 981.5;
5. Filming by news media; ~~or~~;
6. Filming solely for private family use; ~~or~~;
7. Any business, non-profit organization, and/or entity which has already obtained appropriate zoning approval (e.g. minor conditional use permit) from the city for regular outdoor filming activities."

SECTION 2: ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 9b) (30 (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

SECTION 3: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

SECTION 4: SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5: PUBLICATION. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____ 2009.

ALLAN R. MANSOOR
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

[Excerpt of Existing Municipal Code Regulations]

CHAPTER V. FILMING ACTIVITIES

Sec. 9-471. Purpose.

The city council of the City of Costa Mesa hereby declares that the purpose of the regulations in this chapter is to provide a uniform set of regulations for filming activities which streamline permits for such activities and protect the public health, safety and welfare.

(Ord. No. 97-18, § 1, 6-2-97)

Sec. 9-472. Definitions.

(a) *Filming*, as used in this chapter, means and includes all activity attendant to staging or shooting motion pictures, television shows or programs, commercial still photography, video tapes, computer-based programs, or other visual reproduction technology now known or hereafter created. The period of filming includes the set-up, strike and time of photography.

(b) *Commercial films*, as used in this chapter, means and includes all activity attendant to filming any entertainment or advertising programs for any media now known or hereafter created.

(c) *Documentary, charitable or student films*, as used in this chapter, means any filming by a nonprofit organization which qualifies under the Internal Revenue Code section 501(c)(3) as a charitable organization or is an accredited educational institution, or public television outlet, and for which no person, directly or indirectly, shall receive a profit from the marketing and production of the film or from showing the films, tapes or photos.

(d) *News media*, as used in this chapter, means filming for purpose of spontaneous, unplanned television news reporting by journalists, reporters, photographers or camera operators.

(e) *Private property*, as used in this chapter, means any property now owned by the city on which filming would not interfere with public rights-of-way, access or safety.

(Ord. No. 97-18, § 1, 6-2-97)

Sec. 9-473. Permit required.

(a) No person shall use any city street, alley, sidewalk, park, pier, off street parking facility, way or other public property owned or controlled by the city for the purpose of making commercial films without first applying for and receiving a permit from the city manager or his/her designee, provided that the provisions of this chapter shall not apply to or be construed to affect (1) news media and (2) filming solely for private family use.

(b) No person shall use any private property for the purpose of making commercial films without first applying for and receiving a permit from the city manager or his/her designee. Notwithstanding the foregoing, the provisions of this chapter shall not apply to or be construed to affect the following filming on private property:

1. Filming which requires no parking variances and uses no public property or rights-of-way on public property;
2. Filming which does not impair the quiet enjoyment of the surrounding properties;
3. Filming which does not involve the use of any pyrotechnic device as defined in California Health and Safety Code section 12526;
4. A licensed business which regularly employs a licensed pyrotechnic operator as defined in California Code of Regulations section 981.5;
5. Filming by news media; or
6. Filming solely for private family use.

(Ord. No. 97-18, § 1, 6-2-97)

Sec. 9-474. Permit application and review.

(a) Each application for filming under this chapter must be completed in full and filed with the city manager or his/her designee.

(b) Each application must include the following information:

1. The name of the owner or owner's designee, the address and telephone number of the place at which the activity is to be conducted;
2. The specific location at such address or place;
3. The inclusive hours and dates such activity will transpire;
4. A general statement of the character or nature of the proposed filming activity, including a detailed description of any potentially disruptive activities.
5. The name, address and telephone number of the person or persons in charge of such filming activity;

6. The number of personnel involved;
 7. Use of any animals or pyrotechnics;
 8. A list of major equipment to be used, including but not limited to trucks, buses, limousines and cameras; and
 9. Such additional information as the city manager or his/her designee may reasonably require.
- (c) The permit application shall be in a form the city manager or his/her designee may reasonably require. In addition to the foregoing, the applicant may submit the permit application on the form adopted and in use by the Orange County Film Commission.
- (d) The city manager or his/her designee may refer the application to such appropriate city departments as are directly impacted by the application and as he/she deems necessary from the nature of the application for review, evaluation, investigation and recommendations by the departments regarding approval [or] disapproval of the application.
- (e) The city manager or his/her designee shall issue a permit under this chapter if it is determined that the following criteria have been met:
1. The proposed use will not unreasonably interfere with traffic or pedestrian movement, or unreasonably interfere with or endanger the public peace or rights of nearby residents to the quiet, peaceable enjoyment of their property, or otherwise be detrimental to the public peace, health, safety or general welfare;
 2. The proposed use will not unduly impede, obstruct or interfere with the operation of emergency vehicles or equipment in or through the permit area, or adversely affect the city's ability to perform municipal functions or furnish city services in the vicinity of the permits area; and
 3. The proposed use will not constitute a fire or safety hazard and all proper safety precautions will be taken as is reasonably necessary to protect the public peace, health, safety or general welfare.
- (f) The city manager or his/her designee shall deny the permit if the conditions of this chapter and all applicable laws and regulations have not been met or if the application contains incomplete or false information.
- (g) The city manager or his/her designee may immediately revoke a permit which has been granted, if the conditions of this chapter and all applicable laws and regulations are no longer being met, if the information supplied by the applicant becomes false or incomplete, or if any substantial change in circumstances results in the proposed use becoming detrimental to the public peace, health, safety or general welfare.
- (Ord. No. 97-18, § 1, 6-2-97)

Sec. 9-475. Permit application, location and fees.

- (a) An application fee set by resolution of the city council shall be required for formal processing of every application made under this chapter. Payment may be made in person or by check.
 - (b) No application fee shall be required of charitable or student films or for filming conducted on behalf of the city or any city departments or divisions.
 - (c) No separate business license tax, fee or charge shall be charged for any applicant whose sole business is commercial filming under this chapter.
 - (d) Each permittee filming under this chapter shall pay a location fee set by resolution of the city council for the daily use of any public property for commercial filming permitted under section 9-473(a). No location fee shall be charged for commercial filming on private property permitted under section 9-473(b) hereof. Preparation and strike days shall be charged at fifty (50) per cent of the daily use rate.
 - (e) Each permittee filming under this chapter shall reimburse the city for all costs incurred by city, the amount of which shall be determined by the city manager or his/her designee, for city personnel or equipment provided to the applicant for the purpose of assisting or providing security or protection to the applicant for activities conducted under the permit.
 - (f) A deposit shall be made to the city, the amount of which shall be determined by the city manager or his/her designee, for any damage repairs or cleanup required by [the] city resulting from applicant's use of public facilities. Such deposit may include estimated costs for city services provided to the applicant during activities conducted under the permit. Upon completion of filming activities, the total costs incurred by the city will be determined and any final payment will be used or a refund of balance of deposit will be made.
- (Ord. No. 97-18, § 1, 6-2-97)

Sec. 9-476. Rules and regulations.

- (a) In addition to the requirements of this chapter and all other applicable laws, rules and regulations, the city manager or his/her designee shall condition the permit on such terms and conditions regarding the time, place and manner of utilizing the city streets or other public property which are necessary and appropriate under the circumstances.
- (b) Rules: The city manager or his/her designee is authorized and directed to promulgate rules and regulations, subject to approval by resolution of the city council, governing the form, time, and location of any film activity set forth within the city. He/she shall also provide for the issuance of permits. The rules and regulations shall be based upon the following criteria:

1. The health and safety of all persons;
2. Avoidance of undue disruption of all persons within the affected area;
3. The safety of property within the city; and
4. Traffic congestion at particular locations within the city.

(c) Upon reasonable notice by the applicant, the city manager or his/her designee shall have the power, upon a showing of good cause, to change the conditions under which the permit has been issued provided established limitations are complied with in all material respects.

(Ord. No. 97-18, § 1, 6-2-97)

Sec. 9-477. Requirements for granting application.

(a) Prior to the granting of the application, each applicant shall agree to indemnify, defend and hold the city, its authorized agents, officers, representatives and employees harmless from and against any and all costs, liabilities, penalties, or other expenses, including defense costs and legal fees, resulting from any and all claims or damage of any nature, including any accident, loss or damage to persons or property.

(b) Except as provided herein, each applicant must comply with all city, state and federal laws, regulations and ordinances, and must obtain all necessary permits and licenses as a precaution for the commencement of commercial film production hereunder. Thereafter, the permittee shall remain in full compliance with all such city, state and federal laws, regulations and ordinances, permits and licenses throughout the filming.

(Ord. No. 97-18, § 1, 6-2-97)

Sec. 9-478. General permit conditions.

Any applicant granted a permit pursuant to this chapter shall comply with all of the following conditions:

(a) The permittee will be required to submit a permit request with sufficient advance notice to allow for the appropriate review of the application. If the filming requested interferes with traffic or involves potential public safety hazards, an application may be required to be submitted at least five (5) working days in advance.

(b) The permittee is required to obtain the property owner's permission, consent, and/or lease for use of property not owned or controlled by the city.

(c) The temporary parking of equipment, truck, and/or cars in zones that will not permit it, will not be allowed without the approval of the transportation services manager or his/her designee.

(d) For filming that would impair traffic flow, the permittee must use law enforcement personnel designated by the city manager or his/her designee, which may include the Orange County Sheriff, California Highway Patrol, or city law enforcement personnel and comply with all traffic control requirements deemed necessary by the city.

1. The permittee shall furnish and install advance warning signs and any other traffic control devices in conformance with the Manual of Traffic Controls, State of California, Department of Transportation. All appropriate safety precautions must be taken;

2. Traffic may be restricted to one (1) twelve (12) foot lane of traffic, and/or stopped intermittently. When necessary circumstances exist, traffic may be rerouted as provided in a detour plan approved by the city. The period of time that traffic may be restricted will be determined by the city based on location;

3. Traffic shall not be detoured across a double line without prior approval of the appropriate city departmental representative;

4. Unless authorized by the city, the camera cars must be driven in the direction of traffic and must observe all traffic laws; and

5. Any emergency road work or construction by city crews and/or private contractors under permit or contract to the appropriate department shall have priority over filming activities.

(e) When parking in a parking lot, the permittee may be billed according to the current rate schedule established by the city. In order to assure the safety of citizens in the surrounding community, access roads to parks or other areas, which serve as emergency service roads, must never be blocked without prior approval. No relocation, alteration, or moving of city-owned structures or property will be permitted without prior approval.

(f) The permittee shall conduct operations in an orderly fashion with continuous attention to the storage of equipment not in use and the cleanup of trash and debris. The area used shall be cleaned of trash and debris upon completion of filming at the scene and restored to the original condition before leaving the site.

(g) The permittee shall be liable for any damage suffered by the city resulting from the granting or use of this permit and, at the election of the city, shall repair the damage or reimburse the city for all expenses related to such damage.

(Ord. No. 97-18, § 1, 6-2-97)

Sec. 9-479. Insurance.

(a) As a condition of issuance of a permit hereunder, every permittee must procure and maintain in full force and effect during the term of the permit, a policy of liability insurance in a form and with companies approved by city and approved to do business in California, which policy names the City of Costa Mesa, its officers, employees and agents as additional insured and which provides sufficient coverage that the city manager or his/her designee determines to be necessary and adequate under the circumstances. Proof of insurance shall be submitted to the city in advance of the issuance of a permit. The city manager or his/her designee may waive the requirement of insurance if the city manager or his/her designee determines that the intended use does not present any significant exposure to liability for the city, its officers, employees and agents or to public property damage.

(b) The permittee shall conform to all applicable federal and state requirements for workers' compensation insurance for all persons operating under the permit.

(c) Surety or bond: To ensure cleanup and restoration of the site, the permittee may be required to post a refundable faithful performance bond, cash surety or other comparable form of guarantee in an amount to be determined by the city manager or his/her designee at the time the application is submitted. Upon completion of filming and inspection of the site by the city, the guarantee may be returned to the applicant. (Ord. No. 97-18, § 1, 6-2-97)

Sec. 9-480. Notification and appeals.

(a) The city manager or his/her designee shall act upon the application in a timely fashion and shall approve or disapprove the application in a period of not greater than five (5) days following the filing of the application. The applicant shall be immediately notified of the action of approval, denial or revocation of the permit application or permit issued under this chapter.

1. The notice of denial or revocation shall state the reasons for such action and the appropriate remedy or cure, if applicable.

2. The notification shall be deemed satisfied when the notice is sent by facsimile or telecopier machine to the telephone number listed on the application, or if no number is listed, when notice is placed, postage prepaid in the United States mail addressed to the applicant at the address shown on the permit application.

(b) An applicant or permittee aggrieved by the city manager or his/her designee under this chapter shall have the right to appeal to the city council. The appeal shall be taken within five (5) days after notice has been received by the applicant or permittee. The

city council shall act upon the appeal within fifteen (15) days of the filing of an appeal.

(Ord. No. 97-18, § 1, 6-2-97)