

Ordinance No. 022-2023

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida Providing Amendments To Chapter 22, Businesses At Article IV. Commercial Motion Picture Making, Division 1. Generally At Section 22-127. Penalty For Violations; Further Amending Division 2. Permit At Sections 22-151. Required; Application Fee, 22-152. Application, 22-153. Prerequisites To Issuance, And By Adding New Sections 22-154. Appeals, 22-155. Duties Of Permittee, 22-156. False Information Prohibited In Application, 22-157. Permits Nontransferable, 22-158. Waiver Of Provisions And 22-159. Possession; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date.

BE IT ORDAINED by the Town Council of the Town of Palm Beach as follows:

Section 1 –

Chapter 22, Businesses is hereby amended at Article IV Commercial Motion Picture Making as follows:

ARTICLE IV. COMMERCIAL MOTION PICTURE MAKING

DIVISION 1. GENERALLY

Sec. 22-126. 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:

Commercial motion picture making includes video production of any nature.

Sec. 22-127. Penalty for violations.

Persons found to be in violation of any provision of this chapter may be subject to penalties provided by law for the violation of municipal ordinances or, alternatively, may be subject to the jurisdiction of the code enforcement board. Nothing in this section shall prevent the town from seeking civil injunctive relief if deemed appropriate by the town in the circumstances. Any person found guilty of violating the terms of this article shall be subject to section 1-14. A citation for violation of this article shall not preclude the town from seeking other relief such as injunctive or declaratory relief to enforce the provisions of this article.

DIVISION 2. PERMIT

Sec. 22-151. Required; application fee.

- (a) Any person desiring to use the public streets or sidewalks, the public rights-of-way, or other public properties within the town for the purposes of commercial motion picture making shall be required to first obtain a permit for that activity from the town council. This permit is not intended to preclude legitimate video production of news events.
- (b) ~~The application for permit shall be accompanied by a \$1,000.00 nonrefundable permit fee payable to the town for the administrative processing of the permit application. In addition to the \$1,000.00 application fee, there will be a filming fee of \$800.00 per day for each day of filming. Before a permit is issued pursuant to this article, there shall be paid to the town an administrative processing fee and daily filming fee, in accordance with the fee schedule adopted by the town council by resolution as may be amended from time to time.~~

Sec. 22-152. Application.

~~All applications for permits referenced in section 22-151 shall be filed with the town clerk at least 30 days and not more than 45 days prior to the date or dates upon which the applicant wishes to conduct the activity. Complete applications must be filed with the town clerk no less than 20 days prior to the town council meeting at which the application is to be considered. If, while any application is pending, or during the term of any permit granted pursuant thereto, there is any change in fact, policy, or method that would alter the information given in the application, the applicant shall notify the town in writing thereof within 48 hours after such change.~~

~~The application shall contain the following information:~~

- ~~(1) The name and address of the person applying for the permit.~~
- ~~(2) The number of personnel required by the applicant to conduct the activities for which the permit is sought.~~
- ~~(3) The date, time and places during which the proposed activity is to be conducted and a description of the specific activities. This information shall describe the specific public property sought to be utilized, the specific times of day during which the properties are requested to be utilized, and the specific activity which is to be conducted upon the property.~~
- ~~(4) The name, address and telephone number of the specific person who is to be responsible for all of the activities to be conducted pursuant to the terms of the permit.~~

Sec. 22-153. Prerequisites to issuance.

Prior to a permit's being granted under this division, the following shall be provided to the town by the applicant:

(1) ~~(1)~~ *Hold harmless agreement.* The applicant shall execute a hold harmless agreement in favor of the town saving, defending and holding harmless the town, its agents, employees and representatives, from any claim arising as a result of the activities of the applicant, his agents, representatives or employees, within the town. This agreement shall be executed by an individual and/or entity capable financially and otherwise of honoring the terms thereof, and the agreement shall be in a manner and form acceptable to the town and deemed to provide the protection necessary to the town as intended by this section. The applicant shall execute a hold harmless agreement in favor of the Town of Palm Beach hereby releasing and forever discharging the Town of Palm Beach, and agree to indemnify, defend, and hold the Town of Palm Beach and its agents, employees, elected officials, and representatives, free and harmless from and against any and all claims, losses, expenses, suits, costs, fines, and damages, including attorney fees, or liabilities of every kind and character arising out of or relating to any and all claims for bodily injury, including death in connection with or arising directly or indirectly out of the activities of the applicant, its agents, representatives, or employees, within the Town of Palm Beach. This agreement shall be executed by an individual and/or entity capable financially and otherwise of honoring the terms thereof, and the agreement shall be in a manner and form acceptable to the Town of Palm Beach and deemed to provide the protection necessary to the Town of Palm Beach as intended by this section.

(2) *Indemnification Clause.* To the fullest extent allowed by law, the applicant shall protect, defend, reimburse, indemnify, and hold harmless the Town of Palm Beach, and the Town's officers, agents, and employees free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, attorneys or other professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of every kind and character in connection with, or arising directly or indirectly out of, or related to this applicant and the activity performed hereunder. Without limiting the generality of the foregoing, applicant's indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damages to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. Applicant agrees to investigate, respond, adjust, and provide a defense for, all and any such claims, demands, and actions at applicant's sole expense and agrees to bear and remain liable for all such other costs and expenses relating thereto, even if such claim is groundless, false, or fraudulent. Notwithstanding the foregoing, applicant's indemnity shall not extend to liability for damages to persons or property to the extent such damage was caused by any act, omission, or default of the Town, or by the Town's officers, agents, and employees.

(4)(3) Applicant acknowledges and agrees that the Town would not enter into a contract without this indemnification of Town by applicant, and that Town's entering into a contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of the applicant. Nothing in this Contract shall be construed to affect in any way the Town's rights, privileges, and immunities as set forth in Florida Statute 768.28.

(42) *Certificate of insurance.* ~~The applicant shall provide a certificate of insurance naming the town as a named insured under the insurance policy for an amount not less than \$10,000,000.00. When an aircraft is to be involved in any filming, the insurance policy shall be for an amount not less than \$100,000,000.00, and when any watercraft is to be involved in any filming, the insurance policy shall be for an amount not less than \$25,000,000.00. The town council may increase the minimum amount of insurance specified herein upon the recommendation of the town manager or his designee. Applicant shall provide at its own cost and expense Comprehensive General Liability Insurance coverage endorsing the Town of Palm Beach as an additional insured with limits of liability not less than \$10,000,000.00 per occurrence. All required insurance policies shall provide a waiver of subrogation and rights of recovery against the Town of Palm Beach, including its agents, officers, past and present employees, elected officials, and representatives. The insurance policy in effect shall protect both parties and be primary and non-contributory for any and all losses covered by the above-described insurance. Insurers have no recourse against the Town of Palm Beach for payment or assessments in any form on any insurance policy. When an aircraft is to be involved in any filming, the applicant will be required to obtain aviation coverage with limits of liability not less than \$100,000,000.00 per occurrence. If any watercraft is to be involved in filming, marine coverage is required with limits of liability not less than \$25,000,000.00 per occurrence. The town council may increase the limits of liability and request additional coverages as necessary upon the recommendation of the Town Manager or designee.~~

(53) *Deposit for services.* The applicant shall deposit with the town an amount determined by the town manager or designee and approved by the town council, to compensate the town for any extraordinary services required by the town for purposes of carrying on the activity to be conducted pursuant to the terms of the permit.

(64) *Time schedule.* In no event shall any of the activities to be conducted pursuant to the terms of the permit be conducted between the hours of 8:00 a.m. and 10:00 a.m., and 4:00 p.m. and 6:00 p.m. Dates and times during which filming shall be allowed shall be subject to the approval of the town manager or designee.

- (75) *Deference to normal flow patterns.* At no time shall the public streets, sidewalks or rights-of-way of the town be blocked or impeded to restrict or inhibit the normal flow of pedestrian or vehicular traffic.
- (86) *Limitation to commercial districts.* The activities permitted by this section are restricted to the commercially zoned districts within the town and shall not be permitted within the residentially zoned districts.
- (97) *Prohibition during season.* The activities permitted by this section shall take place only from April 16 through November 14 of any year. In no event shall commercial motion picture making take place from November 15 through April 15 of any year.
- (108) *Prohibition on narrow streets.* In no event shall any of the activities to be conducted pursuant to the terms of a permit be conducted on any street, road or thoroughfare that is less than 30 feet in width of paved right-of-way.
- (119) *Prohibition in or adjacent to governmental buildings.* In no event shall any of the activities to be conducted pursuant to the terms of a permit be conducted in any governmental building of the town or on the sidewalks or rights-of-way abutting any such building.
- (120) *Maximum number of days per month.* In no event shall commercial motion picture making be permitted to be conducted within the town for a period of more than seven days in any one month during the period of time that is allowed for that activity as specified by the terms of this section. It is the intention of this subsection that the seven-day period is the maximum number of days allowed for motion picture making during any one month within the town. In other words, if one applicant has already received a permit to conduct motion picture making activities within the town for a period of seven days during any one month, no other permits shall be granted to that applicant or any other applicant for motion picture making activities during that particular month. For purposes of this section, applications shall be considered by the town council in the priority of the earliest filed application.

Sec. 22-154. Appeals.

The town manager or his designee shall have the authority to revoke a commercial motion picture filming permit issued under this division upon violation of the terms of the permit. The permit shall be determined to be null and void and may be immediately terminated. If a commercial motion picture filming permit is denied or revoked, any person aggrieved shall have the right to appeal to the town council. The appeal must be filed at least five days prior to the next available meeting of the town council subsequent to the notice of appeal.

Sec. 22-155. Duties of permittee.

The permittee under this division shall comply with all provisions of this article, other laws and ordinances of the town, state and federal government, and all permit direction and conditions of the permit.

Sec. 22-156. False information prohibited in application.

No person shall knowingly falsify or misrepresent any information or representation made in the permit.

Sec. 22-157. Permits nontransferable.

Permits issued under this article shall be nontransferable.

Sec. 22-158. Waiver of provisions.

The town council may in its discretion waive any requirements of this article.

Sec. 22-159. Possession.

The person heading or leading the filming process shall carry the commercial motion picture filming permit upon his or her person during the conduct of filming and shall be present.

Section 2 – Severability.

If any provision of this ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance are hereby declared severable.

Section 3 – Repeal Of Ordinances Or Parts Of Ordinances In Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof, which conflict with this or any part of this ordinance are hereby repealed.

Section 4 – Effective Date.

This ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach, Florida, on the First Reading the 10th day of October 2023; and for the Second and Final Reading on this 14th day of November 2023.

Danielle H. Moore, Mayor

Margaret A. Zeidman, Town Council President

Bobbie D. Lindsay, President Pro Tem

Julie Araskog, Town Council Member

ATTEST:

Edward Cooney, Town Council Member

Kelly Churney, Acting Town Clerk

Lewis S.W. Crampton, Town Council Member