

ORDINANCE NO. O-2016-67

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER,
ADDING ARTICLE IX TO CHAPTER 2., "FINANCE AND TAXATION"
OF THE CODE OF ORDINANCES, CITY OF TYLER TEXAS,
RELATING TO THE ESTABLISHMENT OF GUIDELINES AND
REGULATIONS RELATED TO COMMERCIAL FILMING IN THE CITY
OF TYLER, TEXAS; PROVIDING A SEVERABILITY CLAUSE;
PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE
DATE.**

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether expressed or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed in the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, the Texas Film Commission has established the Film Friendly Texas program in an effort to help communities effectively handle on-location filming; and,

WHEREAS, the adoption of filming guidelines and permit regulations are a requirement in seeking certification for Tyler as Film Friendly Texas Community; and,

WHEREAS, City of Tyler recognizes that on-location commercial filming is good business for the community and can promote economic activity and so desires to be a Film Friendly Texas Community; and,

WHEREAS, the filming guidelines and permit regulations are intended to create a program for promoting economic development activity while protecting the personal and property rights of Tyler citizens and businesses; and,

WHEREAS, the filming guidelines and permit regulations cover requests for and apply to the commercial use of City-owned property, including but not limited to streets, rights-of-way, parks, and/or public buildings, and commercial use of private property that may affect adjacent public or private property in all types of motion picture production, including, but not limited to, feature films, television programs, commercials, music videos and corporate films; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: That Tyler City Code, Chapter 2, "Finance and Taxation", is hereby amended by adding Article IX., "Commercial Filming Regulations", to read as follows:

ARTICLE IX. COMMERCIAL FILMING REGULATIONS

Sec. 2-82. Purpose. Applicability.

The guidelines contained herein are intended to create a program for promoting economic development activity within Tyler and the vicinity of the City. The permitting process is intended to protect the personal and property rights of Tyler, Texas residents and businesses, and to promote the public health, safety and welfare.

This Article covers requests for commercial use of City-owned property, including but not limited to streets, rights-of-way, parks, and/or public buildings, and commercial use of private property that may affect adjacent public or private property in all types of motion picture production, including, but not limited to, feature films, television programs, commercials, music videos and corporate films.

Sec. 2-83. City Manager or his designee approval of Application to Film required to issue film permit.

- a. The City Manager or designee may authorize the use of any street, right-of-way, park, or public building, equipment or personnel for commercial uses in the filming or taping of movies, television programs, commercials, or training films and related activities by approval of an Application for Filming. In conjunction with these uses, the City Manager or designee will require that any or all of the conditions and/or remuneration herein and as specified on the Application be met as a prerequisite to that use. The City Manager or designee will review Applications for Filming and will have the sole authority to approve or deny an Application.

Upon City Manager or designee's approval of an Application for Filming, the City Manager or designee shall issue a film permit to Applicant. The City of Tyler shall have exclusive authority to grant a film permit to an Applicant for the use of public streets, rights-of-way, parks and public buildings of the City. The permit will include information about the production, including the general location of the production, and the number and timeframe of allowable hours of production per day, as determined by the City.

- b. The City reserves the full and absolute right to prohibit all filming or to order cessation of filming in order to promote the public health, safety or welfare.
- c. City departments, including, but not limited to the Police, Fire, and Building departments, shall have a right to inspect all structures, property, devices, and equipment to be used in connection with the filming and taping at all times.

Sec. 2-84. Application for Filming. Requirements.

- a. Before filing an Application for Filming, contact must be made with the City of Tyler Main Street Department, to discuss the production's specific filming requirements and the feasibility of filming in Tyler, TX. Applications for Filming are available at Gallery Main Street, 110 W. Erwin, Tyler, TX, 75702.
- b. Any commercial producer who desires to undertake a commercial production in Tyler must complete and return the Application for Filming to the City of Tyler Main Street Department within the time frames below:
 1. Commercials or episodic television: a minimum of 10 business days prior to the commencement of filming or any substantial activity related to the project.
 2. Feature films: a minimum of 10 business days prior to the commencement of filming or any substantial activity related to the project.
- c. An application processing fee of \$25 should accompany each Application for Filming. The City Manager or designee may waive this fee upon proof of an organization's non-profit status.
- d. Insurance Requirements. The Applicant shall produce a valid certificate of insurance, issued by a company authorized to conduct business in the state of Texas, naming the City of Tyler and its agents, officers, elected officials, employees and assigns, as additional insured, in an amount not less than \$1,000,000 general liability, including

bodily injury and property damage with a \$5,000,000 umbrella which coverage shall be primary and noncontributory and which coverage provides a waiver of subrogation with a 30 days' notice of cancellation.

- e. Notification of Affected Owners, Residents, Tenants. The Applicant shall submit a short written description of the schedule for the proposed production to the owners, tenants and residents of each property in the affected neighborhood(s) to the City Manager or designee for review. On City Manager or designee's approval, the Applicant shall provide the written description to all affected owners, residents and tenants at least 14 days prior to filming.

The Applicant, or his or her designee, shall make a good faith effort to notify each owner, tenant and resident of all such property, and shall submit, as part of the Application, a report noting owners, tenants and/or residents' comments, along with their signatures, addresses and phone numbers. Based upon this community feedback, and other appropriate factors considered by the City Manager or designee, the City Manager or designee may grant or deny the filming application.

- f. Vehicles and equipment list. Parking plans. The Applicant shall provide a report listing the number of vehicles and types of equipment to be used during the filming, including proposed hours of use and proposed parking locations. Such locations will need to be specifically approved by the City Manager or designee. On-street parking or use of public parking lots is subject to City approval.
- g. The use of exterior lighting, power generators, or any other noise- or light-producing equipment requires on-site approval of the City Manager his designee.
- h. Hours of filming. Unless express written permission has been obtained from the City Manager or designee in advance, and affected property owners, tenants and residents have been notified, filming shall be limited to the following hours:

Monday through Friday: 7 am-9 pm

Saturday, Sunday and holidays: 8 am-8 pm

Or as negotiated with City Manager or designee.

- i. On City Manager or designee's approval of the Application, a film permit shall be issued. The permit will be available from the City of Tyler Main Street Department.
- j. The permit holder shall have the permit available for inspection at all times during the filming time period.

Sec. 2-85. Use of city-owned real property. Costs for Use Rate Schedule.

- a. The City Manager or designee may authorize the use of any street, right-of-way, park or public building for commercial uses in motion picture production. In conjunction with these uses, all of the conditions and/or remuneration described in this section must be met as a prerequisite to that use. A security or damage deposit may be required and such requirement is within the sole discretion of the City Manager or designee.

At the time of application, the Applicant shall reimburse the City for the use of public property based on the following use rate schedule:

<u>Activity/Use</u>	<u>Rate per calendar day</u> for a maximum of eight (8) hours/day
Total or disruptive use of a public building, park, right-of-way, or public area during regular operating hours.	Fee of \$1,000 per day
Partial, non-disruptive use of a public building, park, right-of-way, or public area.	Fee of \$250 per day
Total closure or obstruction of public street or right-of-way, including parking lots and on-street parking.	Fee of \$300 per block, per day
Partial closure or obstruction of public street or right-of-way, including parking lots and on-street parking.	Fee of \$250 per block, per day
Use of City parking lots, parking areas, and City streets for the purpose of parking film trailers, buses, catering trucks, and other large vehicles.	Fee of \$250 per block or lot, per day

- b. If extra fees are incurred during production, the City of Tyler Main Street department will invoice the permit holder. The permit holder shall remit payment for the extra fees within 30 days of the date of the invoice.
- c. The City possesses and retains exclusive authority to grant the Applicant a revocable license for the use of its name, trademark, and logo, public streets, rights-of-way, parks and buildings of the City, and control over the hours of production and the general location of the production.
- d. The City reserves the full and absolute right to prohibit all filming or to order cessation of filming activity in order to promote the public health, safety and/or welfare.

Sec. 2-86 Damage to public or private property.

The Applicant shall pay in full, within twenty (20) days of the date of an invoice, the costs of repair for any and all damage to public or private property, resulting from or in connection with, the production, and to restore the property to its original condition prior to the production.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be Friday, August 1, 2016.

PASSED AND APPROVED this 10th day of August, A. D., 2016.

Martin Heines
MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:



Deborah G. Pullum
APPROVED:

Deborah G. Pullum
DEBORAH G. PULLUM,
CITY ATTORNEY