

ORDINANCE #09-12

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, PROVIDING FOR THE ADDITION OF CHAPTER 131 ENTITLED “FILMING” TO THE CODE OF THE BOROUGH OF CHATHAM

WHEREAS, the Borough of Chatham recognizes the need for and the opportunities presented by permitting documentary and theatrical audiovisual works of film to be filmed within the geographical limits of the Borough of Chatham; and

WHEREAS, there exists a need for the Borough of Chatham to provide for Ordinances governing the activity of filming within the geographical limits of the Borough of Chatham; and

WHEREAS, the Code of the Borough of Chatham presently does not have a Chapter of its Ordinances dedicated to governing the activity of filming.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of the Borough of Chatham, County of Morris, State of New Jersey, as follows:

SECTION I.

Chapter 131, entitled “Filming” is hereby adopted and inserted into the Code of the Borough of Chatham alphabetically under General Legislation between Chapter 129, entitled “Fees” and Chapter 133, entitled “Firearms and Weapons”, as follows:

CHAPTER 131 FILMING

§ 131-1 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADMINISTRATIVE ASSISTANT: For the intent and purpose of this Chapter 131 of the Code of the Borough of Chatham, the Administrative Assistant shall be defined as such Borough employee whose job description as set forth in the Borough of

Chatham's Personnel Policies includes "to serve as Downtown Manager"; and who is further defined as a "liaison to the tenants and owners in the commercial or business district" as set forth in §131-3 C(2), and as a "coordinator and liaison between the Borough departments and the tenants and property owners in the commercial district affected" by the issuance of a permit for filming, as set forth in §131-3 C(3) of this chapter. Notwithstanding the foregoing to the contrary, such other duties of the Administrative Assistant as described in the Borough of Chatham's Personnel Policies that do not pertain to this chapter shall remain in full force and effect.

FILMING: The taking of still or motion pictures, either on film, videotape, digital or similar recording medium, for commercial purposes intended for viewing on video receivers, television, in theaters, the Internet or for institutional use. Filming performed by one individual using a hand-held camera without assistance from others, or filming conducted by educational institutions for educational purposes, including student film makers, shall be excluded from this Chapter.

PUBLIC LANDS: Any and every public street, highway, sidewalk, square, public right-of-way, public park or playground, public building and property or other public place within the Borough, which is within the jurisdiction and control of the Borough of Chatham.

§ 131-2 Permit required; application; point of contact.

A. No person, firm or corporation shall film or permit filming within the Borough of Chatham without: (1) obtaining an application for permit therefore; (2) obtaining the required approvals; and (3) filing the completed/approved permit, together with the applicable permit fee to the Borough at least ten (10) calendar days prior to the first date that filming is to take place.

B. Chatham Borough filming permit applications may be obtained from the office of the Borough Clerk during normal business hours. Application for such permits shall be in a form approved by the Borough Administrator and shall be accompanied by a permit fee in the amount established by ordinance of the Borough of Chatham.

C. The following information shall be included in the permit application:

(1) Locations of filming;

(2) Proposed duration of filming, including date(s) and hours; subject to the final approval of the Administrative Assistant as to the final filming schedule within the Borough;

(3) Amount of space required on public streets/highways/sidewalks, etc.; and

(4) Contact information of applicant, including the on-site person.

D. Duration of time authorized.

(1) One (1) permit shall be sufficient to authorize filming on two (2) calendar days within a period of not more than five (5) calendar days beginning on the date of issuance of the permit, provided that each such date on which filming is to take place shall be specified in the permit.

(2) Permission for filming in excess of four (4) days as described in § 131-2E(1) may be granted by the Borough Council upon filing of a request with the Borough Clerk seven (7) calendar days in advance of the Borough Council meeting at which the matter is to be considered. A copy of the permit application shall be attached to the request. See also § 131-3J.

E. If a permit is issued and due to inclement weather or other good cause filming does not, in fact, take place on the dates specified, the Borough Administrator may, at the request of the applicant and with proper notice given by the applicant or agent of the applicant previously authorized by the approving authorities to act as an agent of the applicant to approving authorities and any affected property owners/tenants as determined by approving authorities, issue a new permit for filming on other dates subject to full compliance with all other provisions of this chapter. No additional fee shall be paid for this permit.

§ 131-3 Issuance of permits filming restrictions; appeals; exceptions to limitations.

A. A permit shall be limited to no more than five (5) calendar days per project.

B. No more than two (2) permits shall be issued by the Borough of Chatham for filming that will take place in any residential zone without a waiver pursuant to § 131-3J.

C. Issuance of permits.

(1) No permit shall be issued by the Borough Administrator unless a completed application is filed with the Office of the Borough Clerk at least ten (10) calendar days prior to the first date filming is to take place; and, where the filming is to take place in any commercial or business district, a copy of the application is filed with the Borough Clerk at least ten (10) calendar days prior to the first date filming is to take place. However, the Borough Administrator may waive the ten (10) calendar-day period if, in the judgment of the Borough Administrator, the applicant has obtained all required approvals and adjacent property owners or tenants do not need to be notified.

(2) Where the filming is to take place in any commercial or business district of the Borough of Chatham, the Administrative Assistant shall act as liaison to the tenants and owners in the commercial or business district. In that regard, the applicant shall:

(a) Distribute relevant information regarding the proposed filming to the property owners and merchants in the commercial or business district that may be affected;

(b) Provide to the Police Department, and such other municipal departments as may be necessary, written comments from the property owners and tenants in the commercial or business district;

(c) Contact the Chatham Police Department and any other relevant departments to coordinate the information with the property owners and tenants in the commercial district; and

(3) Upon issuance of a permit by the Borough Administrator, the Administrative Assistant shall be the coordinator and liaison between Borough departments and the tenants and property owners in the commercial district affected.

(4) No permit shall be issued for filming upon public lands unless the applicant shall provide the Borough with satisfactory proof of the following:

(a) Proof of insurance coverage, pursuant to the requirement that applicant shall maintain with insurance carriers rated at a minimum A- (A minus) by A.M. Best's Insurance Rating Guide, insurance as follows:

[1] General Liability, including premises/operations, blanket contractual, bodily injury (including death resulting therefrom), property damage and personal injury with limits not less than one million (\$1,000,000.00) dollars per occurrence subject to an aggregate of three million (\$3,000,000.00) dollars.

[2] In the event motor vehicles are in use as a means to arrive and depart from filming operations or during filming operations, Automobile Liability for owned, hired and non-owned vehicles with limits not less than one million (\$1,000,000.00) dollars Combined Single Limit;

[3] Workers' Compensation Insurance (including Employer's Liability), which must, at minimum, comply with all statutory regulations in the governmental jurisdiction where filming work is being performed;

[4] Media (Professional) Liability coverage at a minimum limit of five million (\$5,000,000.00) dollars per claim and in the aggregate;

[5] Applicant will name the Borough of Chatham and its directors, officers, employees and agents as additional insureds under the General Liability and Automobile Liability policies outlined above. In addition, applicant shall be solely responsible for maintaining, and requiring its subcontractors and agents (if any) to maintain the same coverage as outlined herein. Applicant's insurance coverage shall be primary above all other valid and collectable policies in force, and the Administrator of the Borough of Chatham shall be provided thirty (30) days advance notice of cancellation or reduction in coverage or limits. Policies shall contain waivers of subrogation by endorsement or

otherwise. The Borough of Chatham shall be provided with the applicable certificates of insurance or evidence of coverage before filming commences; and

[6] In the event the above requirements are not met, the Borough of Chatham reserves the right, at its option, to either purchase the above insurance and bill same to applicant or revoke any previously issued permit with no obligation to refund any permit fees.

(b) An agreement, in writing, in a form approved by the Borough Attorney, whereby the applicant agrees to indemnify and save harmless the Borough of Chatham, its officers, employees and agents, from any and all liability, expense, claim or damages resulting from the use of public lands;

(c) The posting of a cash bond of five hundred (\$500.00) dollars, or a maintenance bond of one thousand (\$1,000.00), running in favor of the Borough and protecting and insuring that the location utilized will be left, after filming, in a satisfactory condition, free of debris, rubbish and equipment, and that all Borough ordinances, rules and regulations will be followed. Within two (2) business days of the completion of the filming, the Borough will return the bond if there has been no damage to public property or public expense caused by the filming;

(d) A contractual agreement with the Chatham Police Department for paid police coverage during the time indicated in the permit;

(e) Proof of service provided by the applicant of written notification of proposed dates and lands to be used for production activities to any and all tenants and property owners who will be directly affected by the filming and its site location, as determined by the approving authorities, and simultaneously said tenants and property owners shall be informed that objections may be filed with the Borough Clerk. Such notification is to take place at least three business days prior to the requested shooting date, with proofs submitted to the Borough Clerk prior to issuance of the permit; and

(f) A written approval from the Chatham Police Department authorizing issuance of the permit and providing any traffic control requirements and public safety conditions.

D. The applicant shall take all reasonable steps to minimize interference with the free passage of pedestrians and traffic over public lands and shall comply with all lawful directives issued by the Chatham Police Department with respect thereto.

E. The applicant shall conduct filming in such a manner as to minimize the inconvenience or discomfort to adjoining property owners attributable to such filming and shall, to the extent practicable, abate noise and park vehicles associated with such filming off the public streets. The holder shall avoid any interference with previously scheduled activities upon public lands and limit to the extent possible any interference with normal public activity on such public lands.

F. The applicant shall take all reasonable steps to minimize the creation and spread of debris and rubbish during filming and shall be responsible for removing all equipment, debris and other rubbish from the filming location upon the completion of filming or the expiration of the permit, whichever comes first.

G. Filming, including setup and final cleanup, shall be permitted Monday through Friday between the hours of 8:00 a.m. and 10:00 p.m.

H. The Borough Administrator may refuse to issue a permit whenever he/she determines, on the basis of objective facts and after a review of the application and a written report thereon by the Chatham Police Department and by other Borough departments involved with the proposed filming site, that filming at the location and/or the time set forth in the application would violate any law or ordinance or would unreasonably interfere with the use and enjoyment of adjoining properties, or in the opinion of the Chatham Police Department would unreasonably impede the free flow of vehicular or pedestrian traffic or otherwise endanger the public's health, safety or welfare. Further, the Borough reserves the right to require one or more on-site police officers in situations where the proposed production may impede the proper flow of traffic, the cost of said officers to be borne by the applicant as a cost of production.

I. Any person aggrieved by the decision of the Borough Administrator or the Borough of Chatham denying or revoking a permit or a person requesting relief pursuant to § 131-3J herein may appeal to the Borough Council. A written notice of appeal setting forth the reasons for the appeal shall be filed with the Borough Clerk no later than ten (10) calendar days from the date of the denial or revocation of the permit. The Borough Council shall set the matter down for a hearing within thirty (30) calendar days of the day on which the notice of appeal was filed. The decision of the Borough Council shall be in the form of a resolution. A resolution supporting the decision of the Borough Administrator or granting relief pursuant to § 131-3J shall be adopted by the Borough Council at the first regularly scheduled public meeting of the Borough Council after the hearing on the appeal, unless the appellant agrees in writing to a later date for the decision.

J. The Borough Council may authorize a waiver of any of the requirements or limitations of this chapter, and may authorize filming on other public property not defined as public lands and may authorize filming other than during the hours herein described or may extend the duration of a permit beyond five (5) calendar days or may permit filming at a particular location in a residential zone on more than two (2) occasions during any one (1) calendar year or may waive any other limitation or requirement of this chapter whenever it determines that strict compliance with such limitations will pose an unreasonable burden upon the applicant and that such a permit may be issued without endangering the public's health, safety and welfare.

K. Copies of the approved permit will be sent by the Borough Clerk to the Police Department, Fire Department, Downtown Manager, the Department of Public Works, and

the Board of Health. Copies shall be sent to any appropriate New Jersey state agencies, including the New Jersey Film Commission.

L. The applicant shall notify the Police Department, the Fire Department, Downtown Manager and the Board of Health, twenty-four (24) hours before filming takes place and shall permit the Police Department, the Fire Department, the Board of Health or other Borough inspectors to inspect the site and the equipment to be used. The applicant shall comply with all safety instructions issued by Borough inspectors, including the Police Department, the Fire Department and the Board of Health.

M. In addition to any other fees or costs mentioned in this chapter, the applicant shall reimburse the Borough for any lost revenue or repairs to public property.

N. The applicant will abide by all Rules, Regulations and Protocols adopted by New Jersey Transit, if applicable.

§ 131-4 Fees.

The schedule of fees for the issuance of permits authorized by this chapter are as follows:

A. Permit:

(1) Basic filming for for-profit applicants: one hundred (\$100.00) dollars.

(2) Basic filming for nonprofit applicant's filming for educational, noncommercial use: twenty-five (\$25.00) dollars.

B. Daily filming fee payable in addition to the basic filming permit fee:

(1) Five hundred (\$500.00) dollars per day, except as set forth in § 131-4B(2) hereof.

§ 131-5 Violations and penalties.

Any person violating this chapter or these rules and regulations, upon conviction thereof, shall be punished by a fine not exceeding two thousand (\$2,000.00) dollars per day or by imprisonment in the county jail for a term not exceeding ninety (90) days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

§ 131-6 Exemptions.

The provisions of this chapter shall not apply to:

A. The filming of news stories within the Borough of Chatham by individuals and/or legitimate entities or organizations for purposes of journalism or news-reporting;

B. Filming by one individual using a hand-held camera without the assistance of other persons, or filming by one or more individuals for weddings, religious occasions, and other family or social private parties, occasions, events, or functions;

C. Waiver of fees for student. The fees set forth in §131-4 shall be waived when filming is done by a student in grade school, middle school, high school, college, university or other bona fide educational institution upon receipt by the Borough Clerk of a written certification from a teacher or administrator at the school attended by the student stating that the filming is for educational purposes only and is not intended for commercial use.

D. Filming for authorized Chatham Borough municipal government purposes as may be authorized by the Chatham Borough Council or the Borough Administrator.

§ 131-7 Severability.

If any sentence, section, clause, or other portion of this chapter or the application thereof to any person or circumstance shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or repeal the remainder of this chapter.

SECTION II.

All ordinances or parts of ordinances inconsistent with this within ordinance are hereby repealed to the extent of such inconsistencies.

SECTION III.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION IV.

This ordinance shall take effect as provided by law.

INTRODUCED: July 13, 2009

ADOPTED:

Mayor V. Nelson Vaughan III, Mayor

ATTEST:

Susan Caljean, Municipal Clerk