

TOWN OF GOLDEN BEACH, FLORIDA

ORDINANCE NO. 535.09

AN ORDINANCE OF THE TOWN OF GOLDEN BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES BY REENACTING, WITH CERTAIN MODIFICATIONS, CHAPTER 15 "FILM INDUSTRY" PROVIDING FOR DEFINITIONS, REQUIREMENTS AND REGULATIONS FOR THE PRODUCTION OF FILMS IN THE TOWN OF GOLDEN BEACH; PROVIDING FOR PERMIT APPLICATIONS AND RULES OF CONDUCT; PROVIDING FOR APPROVAL CRITERIA, LIMITATIONS, FEES AND APPEAL PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 15 "Film Industry" of the Town Code of Ordinances regulating film production within the Town was automatically repealed on December 31, 2008 by a "Sunset Clause"; and

WHEREAS, the Town Council finds that film production within the Town must be regulated to protect the health, safety, welfare and well-being of the Town, its residents, the atmosphere and the environment; and

WHEREAS, until the Town reenacts this Ordinance, there will be no regulations in effect to protect the above-referenced interests; and

WHEREAS, the Town Council finds that such regulations and procedures governing film production will serve to promote the health, safety and welfare of the citizens of the Town of Golden Beach and that such regulations and procedures are in the best interests of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

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

Section 2. Reenactment of Chapter 15 "Film Industry". That the Code of Ordinances of the Town of Golden Beach, Florida is hereby amended by adding a Chapter to be numbered Chapter 15, which Chapter shall read as follows:

ARTICLE I. IN GENERAL

Sec. 15-1. 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.

Continuing Violation means a violation which remains uncorrected beyond the time period for correction contained in the civil violation notice.

Film Production means and includes any and all Motion Picture Production, Television Production, Videography and Still Photography.

Motion Picture Production means and includes all activity attendant to staging or shooting commercial motion pictures or programs and commercially prepared videotape.

Permittee means any applicant who shall be a property owner of the site where the filming is to be conducted and to whom a Film Production permit is issued by the Town.

Production Crew means and includes any and all persons who are in any way involved in the production, staging or shooting of commercial motion pictures, videotaping, television shows or programs or Still Photography.

Production Vehicles means and includes any and all vehicles which are in any way involved in the production, staging or shooting of commercial motion pictures, videotaping, television shows or programs or Still Photography and includes but is not limited to campers, mobile homes, automobiles, trucks, trailers, vessels, motorcycles, helicopters and airplanes.

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

Still Photography includes all activity attendant to staging or shooting commercial still photographs.

Television Production means and includes all activity attendant to staging or shooting commercial television pictures, shows or programs and commercially prepared broadcasts.

Temporary Structure means and includes any and all structures assembled on or near a location attendant to Motion Picture Production, Television Production or Still Photography.

Town Equipment means and includes any tangible property, other than real property, owned or controlled by the Town.

Town Facility means and includes any public street, sidewalk, park, recreational facility, building, water body or real property owned or controlled by or under the jurisdiction of the Town.

Uncorrectable Violation means a violation which is irreparable or irreversible in nature and which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance.

Videography means and includes all activity attendant to staging and shooting commercially prepared videotape.

Violator means that person responsible for a violation of the Code.

Sec. 15-2. Findings of fact.

The motion picture, television and still picture industries can be environmentally clean industries which are desirable to the Town so long as there is adequate regulation to protect the health, safety, welfare and well-being of the Town, its residents, the atmosphere and the environment.

Sec. 15-3. Exemption.

(a) *Current news.* The provisions of this article shall not apply to or affect 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 and of general public interest.

(b) *Personal-family use.* The provisions of this article shall not apply to noncommercial filming or videotaping of motion pictures or Still Photography which are solely for personal-family use.

(c) *Training, educational and public service use.* The provisions of this article shall not apply to any industrial, corporate, charitable or not-for-profit Film Production intended for in-house training or educational purposes which is not offered for sale or distribution to third persons and which involves a Production Crew of four or fewer persons and two or fewer Production Vehicles, but the filming requirements of section 15-4 shall apply.

(d) *Still Photography conducted solely within the property owned by the Permittee.* The provisions of this article shall not apply to any Still Photography conducted solely on the property of the Permittee, but the filming requirements of section 15-4 shall apply.

Sec. 15-4. Filming requirements.

The following requirements shall be made of all Motion Picture Production, Television Production and Still Photography within the limits of the Town.

(1) A Film Production permit shall be issued authorizing filming at each location within the Town limits notwithstanding that such filming may be part of one production.

(2) Film Production or related activity shall be permitted between the hours of 7:00 a.m. and 9:00 p.m. Film Production or related activity shall not occur at any other time unless the prior written approval of the Town Manager is granted. Equipment and Crew Members shall not be brought to the location of production prior to 7:00 a.m. and equipment shall begin to be dismantled and removed, and production stopped, with no further work of any kind to be conducted after 10:00 p.m.

(3) No Film Production shall take place on Saturdays, Sundays or legal holidays provided, however, that under special occasions as determined by the Town Manager and provided that the Town has not received objections by neighboring residents defined in section 18 below, filming may occur on Saturdays, Sundays or legal holidays.

(4) All parking relating to Film Production shall be restricted to the paved portions of the driveway of the house where Film Production is occurring, or on the "west lot" owned by the Town at The Strand,

subject to availability. All public roadways shall be kept open at all times unless approved by the Chief of Police. Production Vehicles shall not be parked overnight on or about property that is the location of the Film Production or on roadways within the Town nor shall parking in adjacent empty lots or other property be permitted. Parking may be prohibited in the area of filming activity if, in the opinion of the Town Manager, a safety hazard could result. A fee for the west lot is hereby established as provided in this chapter, which fee may be amended by resolution of the Town Council.

(5) There shall be no conduct that constitutes a violation of Chapter 800, Florida Statutes ("Lewdness, Indecent Exposure") as it may be amended from time to time.

(6) There shall be no act or simulation of acts of rape, sodomy, bestiality, sexual intercourse, acts of violence, portrayal of the dismemberment of bodies or body parts of humans or animals, in view of the public at any time or any vulgarity or profanity that can be heard by the public at any time.

(7) Waste and refuse disposal, as well as placement of portable toilet facilities shall be conducted in the manner directed by the Town Manager or his/her designee.

(8) Any damage to public property, private property and landscape shall be fully restored at the cost of the Permittee or its insurer.

(9) No Film Production or any related activity may take place in violation of any Federal, State or local law, ordinance or regulation including, but not limited to, laws regulating sea turtles and turtle nesting season.

(10) Additional restrictions may be placed on Film Production within the limits of the Town 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 other Town personnel during the filming.

(11) 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 or related activities violate the Town Code.

(12) At no time, during Film Production or related activities, shall lights or lighting be operated in any manner which endangers or

injures the safety or health of humans or animals or which annoys or disturbs the reasonable person of normal sensitivities or which violates sections 14-77, 14-78, 14-79 or other noise/nuisance related ordinances of the Town Code nor shall noise be made or created which endangers or injures personal or real property or which annoys the person of reasonable sensibilities.

(13) Off-duty police officers shall be hired by the applicant and/or owner of the property from the Town Police Department if required by the Police Chief based upon the number of members of the Production Crew, the number of Production Vehicles, the possible or actual interference with the flow of traffic, any anticipated crowds, or other factors regarding public health, welfare and safety.

(14) The Miami-Dade Fire Department must be contacted when the applicant requests the use of fire, pyrotechnics, or will be performing stunts/activities (crashes, jumps, falls that are or can be considered life threatening). Applicant is required to pay for whatever personnel, equipment or other material as may be required by the Miami-Dade Fire Department and to adhere to the guidelines as may be prescribed by the Fire Department. The applicant shall provide proof that the Fire Department has reviewed the plans and the applicant will abide by same. Notwithstanding the foregoing, the applicant must, as a condition precedent to any permit being issued involving fire, pyrotechnics, stunts/activities first submit a detailed plan which must be approved by the Town Manager in writing.

(15) As part of a helicopter low-flight/landing request, an applicant and/or property owner must submit the following: proof of insurance from the company/helicopter owner, proof of pilot's license and certification for requested activities in addition to authorization from FAA authorities.

(16) The Florida Department of Transportation shall be contacted by the applicant when the applicant will be filming on State roadways that are within the Town's boundaries but are under the jurisdiction of the State. If the applicant will be interfering with the normal flow of vehicular traffic on State roadways, a State permit must be obtained by the applicant in addition to the Town's permit and the use of the Town of Golden Beach Police off-duty personnel is mandatory.

(17) Film Crews and other personnel shall not trespass on adjacent properties.

(18) Written notification to property owners within 50 feet from the edge of the property line where filming is must take place to be submitted with the application.

ARTICLE II. FILM PRODUCTION PERMIT

Sec. 15-10. Permit required.

No person shall engage in, conduct or carry on the business of Film Production, Motion Picture Production, Television Productions or Still Photography on private or public property within the limits of the Town without first applying for and receiving a Film Production permit from the Town unless otherwise exempted under section 15-3.

Sec. 15-11. Town manager's duties.

The Town Manager is authorized to act as the agent for the Town in the receipt and processing of applications for Film Production permits. The Town Manager shall issue the Film Production permits in accordance with this article.

Sec. 15-12. Application; fees.

(a) Any person seeking the issuance of a Film Production permit shall complete the written application form provided by the Town Manager. The application and fee shall be delivered to and received by the Town Manager no later than two working days before the commencement of production. Applications received after 12:00 noon will be considered as received on the next business day.

(b) A schedule of application fees that will defray the Town's costs of investigation, review and regulation in connection with the application is hereby established in this chapter.

Sec. 15-13. Contents and effect of application.

(a) An application for a Film Production permit shall contain the following specific information and shall be signed by the homeowner:

(1) Name, address and phone number of the property owner.

(2) Name, address and phone number of applicant's (film/production company or entity) authorized representative including both the main office and local address and phone number used during pendency of the filming.

(3) Location of the Film Production described by a street address or, if necessary, property description, including but not limited to, a parking plan for all vehicles used or anticipated to be used by all individuals and/or production related vehicles associated with the filming.

- (4) Film Production dates.
 - (5) Anticipated hours of filming, which must be consistent with the permit requirements of this chapter.
 - (6) Type of Film Production (still or motion).
 - (7) Proposed use of Temporary Structures, including a description of each Temporary Structure, its proposed use and placement and the dates and duration of each proposed placement.
 - (8) Number and type of Production Vehicles and equipment, as well as the number of Production Crew and other personnel to be on location with the production.
 - (9) Requests for closures of public streets or sidewalks and the proposed dates and necessary duration of such proposed closures.
 - (10) A completed hold harmless agreement signed and sealed (notary seal or corporate seal) in favor of the Town executed by an authorized representative of the Applicant and Property Owner which shall have indemnity language approved by the Town Attorney.
 - (11) A comprehensive list of special effects to be utilized, the proposed date and site for performance of each special effect or use of explosive devices. In addition, the Film Production permit application shall list the person in charge (pilot or technician) of special effects, together with his/her qualifications and licensure by the applicable Federal and State agencies or other permits required by applicable law.
 - (12) Proof of \$1,000,000.00 of liability and property damage insurance, or such greater amount as may be reasonably required by the Town Manager, naming the Town as additional insured.
 - (13) Additional information as may be required by the Town Manager which information may include, but not be limited to, the names, addresses and telephone numbers of the authorized participants and employees of the applicant. Proof may be required to verify the information given by the applicant or employees and agents of the applicant.
- (b) The application for a Film Production permit shall constitute a covenant between the Applicant and property owner and the Town, specifying that the Applicant will halt or interrupt filming upon instruction

from a law enforcement officer of the police department. The Town Police Chief shall not direct that Film Production be halted or interrupted unless in his/her discretion the officer perceives that the filming shall cause or coincide with interference with traffic movement, disturbance of the peace, destruction of property, violation of the law or a threat to the public peace, health, safety or welfare, or as otherwise provided in this chapter.

Sec. 15-14. Approval criteria.

The Town Manager shall not approve issuance of a Film Production permit if one of the following circumstances exist:

- (1) The Applicant and/or property owner has been convicted of a felony or a misdemeanor involving moral turpitude and has not subsequently demonstrated rehabilitative characteristics.
- (2) The Applicant and/or property owner has made a material misrepresentation in the application.
- (3) The proposed Film Production will substantially disrupt the peace and quiet within any area of the Town.
- (4) The proposed Film Production will have a substantial impact upon traffic within any area of the Town.
- (5) The proposed Film Production will have a negative impact upon the health, safety or welfare of the Town.
- (6) The proposed Film Production in any way damages or degrades the image of the Town.
- (7) The Film Production fails to comply with any of the criteria designated under this article for issuance of the Film Production permit or rules and regulations governing the production.
- (8) The Applicant and/or property owner is applying for renewal of a Film Production permit and the Applicant and/or property owner has violated conditions of the previous permit or ordinances or regulations of the Town in the conduct of the Film Production or if, in the instance of successive shoots on the same property, complaints pertaining to noise, traffic, loitering, littering or trespass have been received by the Town from neighboring property owners or their representatives.

Sec. 15-15. Limitations.

- (a) No Film Production permit shall be issued with reference to a particular location if either the Town Manager or Town Council determines

that Film Production at that location would, in any way, adversely affect the public health, safety or general welfare of the citizenry, community and environment of the Town.

(b) The Property Owner or his/her agent shall be present on the premises at all times during the Film Production and related activities. That individual shall not be an owner, employee or agent of the Film Production business.

(c) No more than 40 days of Film Production per property shall be permitted in any calendar year.

(d) No more than 14 consecutive days of Film Production shall be permitted on any property, provided that the Town Manager may increase the maximum consecutive filming period by 7 days in a particular instance if the Town Manager determines that the extension will not result in an adverse impact upon the health, safety, or welfare of the Town residents. Any such increase in the maximum consecutive filming period may be repealed by Town Manager if the Town Manager determines that the Film Production has resulted or is likely to result in an adverse impact upon the health, safety, or welfare of the Town residents.

Sec. 15-16. Fees; deposit for town personnel and extraordinary service fee.

(a) As a condition for issuance of a Film Production permit, the Permittee shall pay to the town the applicable Film Production permit fees which are hereby established and, which fees, may be amended by resolution of the Town Council at any time and from time to time.

(1) Three hundred dollars per day of production on private property involving less than 11 people. No more than 35 days per year, per property, of production shall be permitted for productions involving less than 11 people.

(2) Five hundred dollars per day of production on private property involving 11--20 people. No more than 35 days per year, per property of production shall be permitted for productions involving up to 20 people.

(3) Seven hundred dollars for 1-5 days, \$1,100.00 for 6-10 days of production on private property involving more than 20 people. With productions involving 20 or more people, an off-duty Town Police Officer is required to be present.

(4) There shall be no permits issued for the Town's beach, loggia or parking lot at The Strand or other public property.

(5) Police detail at the current off-duty hourly rate; four-hour minimum.

(6) Four hundred dollars per calendar day of parking at the west parking lot (at The Strand) when available provided, however, that no more than 12 parking spaces shall be used by the permit holder.

(b) At the conclusion of the Film Production, any additional permit fees required in excess of those paid at the time of issuance of the permit will be paid to the Town by the Permittee, and any excess permit fees paid by the Permittee will be refunded by the Town.

(c) The issuance of a Film Production permit shall not operate to waive the payment of any prescribed fees for the use of Town Facilities, and the Permittee shall be required to pay the applicable charges and deposits, if any, as established by the Town for the use of its Town Facilities.

(d) The Town shall recover its reasonable expenses for Town personnel utilized and extraordinary services rendered in connection with a Film Production. Such costs shall include but not be limited to charges for personnel and Town Equipment committed in support of the production. Based on the information contained in the permit application and such consultations as may be required between the Applicant and/or property owner and the Town Manager, an estimate of these costs will be provided to the Applicant at the time his/her application for the permit is approved. Prior to issuance of a Film Production permit, the Permittee shall deposit with the Town the amount of these estimated costs. At the conclusion of the production, expenses below or in excess of the estimates will be refunded by the Town or paid by the Permittee, respectively.

(e) Within sixty (60) days of the expiration of a calendar year, the Town Manager shall submit to the Town Council a report detailing all Film Production that took place in the Town during the preceding calendar year. Such report shall include, without limitation, the name of each Permittee to whom a permit was issued and the amount of permit fees collected.

Sec. 15-17. Denial; term; revocation or suspension.

(a) *Denial of permit.* Where the Film Production permit is denied, the Applicant shall be notified in writing by mail at the address provided by the Applicant on the application within ten days of the denial and the reasons therefor. Permittee may appeal subject to section 15-22.

(b) *Term.* Film Production permits issued pursuant to this article shall be effective for the stated purpose from the date of issuance through the date specified in the permit.

(c) *Revocation or suspension.* A Film Production 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 and regulations;
- (3) Failure to comply with any conditions imposed by the Town on the issuance of the Film Production permit;
- (4) Failure to operate the Film Production in accordance with such ordinances, laws, orders, rules and regulations as may be applicable; or
- (5) 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. 15-18. Notice of hearing and grounds for suspension or revocation.

Prior to suspension or revocation of a Film Production permit, the Permittee shall be notified in writing at the address provided by the Permittee on the application of the grounds for suspension or revocation of the permit. A hearing shall be held before the Town Council upon written request of the Permittee and filed with the Town Manager. Notice of the hearing shall be given to the Permittee at least five days prior to the hearing.

Sec. 15-19. Emergency temporary suspension.

If the conduct or activity of the Permittee creates an imminent peril to the environment or the public health, safety or welfare, the Film Production permit may be summarily suspended by the Town Manager upon recommendation of the Police Chief and notice to the Permittee's on-site representative. The Permittee shall be entitled to a hearing within three working days after request by the Permittee to the Town Manager and any temporary emergency suspension shall not exceed 15 days

pending a hearing before the Town Council. The request for hearing shall be made by the Permittee within three days of the emergency suspension or revocation.

Sec. 15-20. Conduct of hearing on suspension or revocation.

The hearing before the Town Council on the suspension or revocation of a Film Production permit shall be conducted to allow the Permittee the right to be heard and to call witnesses on the Permittee's behalf.

Sec. 15-21. Decision after hearing on suspension or revocation.

The decision of the Town Council shall be rendered within ten days of the close of the hearing on the suspension or revocation of the Film Production permit. The decision shall be in writing and shall set forth the findings of fact and conclusions of law underlying the decision, and the Permittee shall be notified of the decision in writing within ten days of the date of the decision.

Sec. 15-22. Appeal procedure.

The decision of the Town Manager upon a denial of a Film Production permit application may be appealed to the Town Council by written notice thereof filed with the Town Manager within 30 days of the date of the written decision of the Town Manager.

Sec. 15-23. Civil Violations.

- (a) The penalty for a violation of the Town Code relating to the failure to obtain a permit prior to conducting Film Production shall, in addition to any other remedies available under applicable law, be three times the applicable permit fee.
- (b) The penalty for a violation of the Town Code relating to the failure to comply with any conditions imposed by the Town on the issuance of the Film Production permit or the failure to comply with any other provisions enforced through this article shall be \$500.00 per day.
- (c) For each day of a Continuing Violation, an additional penalty in the same amount as that prescribed for the original violation shall be added.
- (d) The penalty for an Uncorrectable Violation shall not exceed \$5,000.00 per violation.
- (e) The Town may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.

(f) A certified copy of an order imposing a civil penalty shall be recorded in the public records and thereafter shall constitute a lien against the property on which the violation existed and upon any other real or personal property owned by the Violator; upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this State, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A civil penalty imposed pursuant to this article shall continue to accrue until the Violator complies or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this article, whichever occurs first. After three months from the date of filing of any such lien which remains unpaid, the Town may foreclose or otherwise execute on the lien. Alternatively, the Town may sue to recover a money judgment for the amount of the lien plus accrued interest. Upon payment of the civil penalty by the Violator or the successor(s), assign(s) or heir(s) of the Violator, the Town Clerk is authorized to execute and record in the Public Records of Miami-Dade County the appropriate Release of Lien document.

(g) No lien provided under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a civil penalty has been recorded, unless within that time an action to foreclose on a lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party may recover interest and all costs, including a reasonable attorney's fee, incurred in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Sec. 15-24. Curative language.

Applications received and/or approved prior to the date of final approval of this chapter shall be bound by the prior fee schedule and conditions for obtaining a permit.

Section 3. Severability. That if 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 Golden Beach, 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 immediately upon adoption.

Sponsored by Town Administration.

The Motion to adopt the foregoing Ordinance was offered by Councilmember Lusskin, seconded by Vice Mayor Rojas, and on roll call the following vote ensued:

Mayor Singer	<u>Aye</u>
Vice Mayor Rojas	<u>Aye</u>
Councilmember Bernstein	<u>Aye</u>
Councilmember Einstein	<u>Aye</u>
Councilmember Lusskin	<u>Aye</u>

PASSED AND ADOPTED on first reading this 25th day of February, 2009.

The Motion to adopt the foregoing Ordinance was offered by Councilmember Bernstein, seconded by Councilmember Rojas and on roll call the following vote ensued:

Mayor Glenn Singer	<u>Absent</u>
Vice Mayor Judy Lusskin	<u>Aye</u>
Councilmember Ken Bernstein	<u>Aye</u>
Councilmember Ben Einstein	<u>Absent</u>
Councilmember Amy Rojas	<u>Aye</u>

PASSED AND ADOPTED on second reading this 17th day of March, 2009.


MAYOR GLENN SINGER

ATTEST:


ELIZABETH SEWELL
TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


STEPHEN J. HELFMAN
TOWN ATTORNEY