

NOTICE IS HEREBY GIVEN that Ordinance #19- 16 was introduced and passed on first reading at the regular meeting of the Mayor and Council on the 20th day of August, 2019 and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 17th day of September, 2019 at 8:00 p.m. or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Karen Hughes, Borough Clerk
Borough of Westwood

Ordinance #19-16

An Ordinance to Revise Chapter 157 - FILMING

Section 1. BE IT ORDAINED that the Mayor and Council of the Borough of Westwood hereby repeal the contents of Chapter 157, Filming, in its entirety and replace it with the following:

§ 157-1. - Purpose and intent.

The Borough of Westwood has determined that family-friendly commercial filming is an important industry in the Borough and should be regulated to maintain the health and safety of all persons, mitigate the disruption to all persons within filming areas, maintain the safety of property within the Borough of Westwood, and control traffic congestion at certain locations within the Borough. This chapter is not intended to apply to purely private filming events, including, but not limited to, the filming or photographing of a wedding or private social function, or the filming by any public entity; neither is it intended to include the filming of news stories.

§ 157-2. - Definitions.

APPLICANT or APPLICANT OF PERMIT — Any person, organization, corporation, association or other entity applying for a film permit from the Borough of Westwood.

BOROUGH – the Borough of Westwood

FILM — As used in this Chapter, any film, including a movie, television program, commercial, still photography, video documentary, music video, internet video or other visual recording medium, used in whole or in part for sale, lease, or other commercial exchange, including the advertisement or promotion of any product, service or organization. A recurrent television or internet series is a film. A film which is not sold or leased in whole or part, or is not otherwise part of a commercial exchange, is a "non-profit film."

FILM CREW MEMBERS — Shall include, but not be limited to: directors, actors, set or costume designers, camera crew members, lighting crew members, sound crew members, boom operators, pyrotechnics experts, stunt performers, extras, stage hands, security personnel, production or personal assistants, contractors and subcontractors, interns (whether or not paid) and agents.

INTERMEDIATE FILM — Commercial still photo shoots, web series, independent films, short films that consist of either a filming crew size that is between ten and 19 people, a casting size that is between ten and 14 people, or the presence of nine or fewer production vehicles on Borough streets.

MAJOR FILM — Major motion pictures, commercials, TV series, network, cable, streaming services (e.g. Netflix, Hulu, Amazon, etc.) that consist of either a filming crew size of 20 or more people, a casting size of 15 or more people, or the presence of greater than ten production vehicles on Borough streets.

MINOR FILM — Commercial still photo shoots, web series, independent films, short films that consist of either a filming crew size that is between four and nine people, a casting size that is between four and nine people, or the presence of three or fewer production vehicles on Borough streets.

NEWS MEDIA — As used in this chapter, filming for the purpose of spontaneous, unplanned television news reporting by journalists, reporters, photographers or camera operators.

PRIVATE PROPERTY — As used in this chapter, any property not owned by the Borough of Westwood, but rather is owned by or assessed to a private person or entity in which filming would not interfere with public right of way, access or safety.

PUBLIC PROPERTY — Any public street, road, sidewalk, public park or playground, Borough-owned building or property or any other public place which is maintained and within the control of the Borough of Westwood.

STILL PHOTOGRAPH — Photographs or other visual impressions which are not films which are sold or leased or otherwise commercially exchanged and all activity related to the staging or shooting of such photographs or other visual impressions.

STUDENT FILM — A not-for-profit film, filmed in eight (8) hours or less, made by currently-enrolled students under the sponsorship of an accredited school or institution of higher learning, who have evidenced such sponsorship with a letter written on school letterhead, signed by a school administrator, and who present a certificate of insurance.

§ 157-3. - Filming/still photography permit.

- A. Permit Requirement. No person or organization shall commence the making of a film, or permit filming or take still photographs (as defined in this Chapter) on public property without first having completed an application and obtained a film/photography permit from the Clerk's office.
- B. No person shall commence the making of a film, commercial film or permit filming or take still photographs on private property without first having completed an application and obtained a film/photography permit from the Borough Clerk's office if filming will interfere with the public's use of public property or rights of way on public property.
- C. Time to Apply. Applicants shall, if practicable, apply for a permit at least 5 days before commencing filming. All permits shall be applied for and obtained from the office of the Borough Clerk during normal business hours. Applications for such permits shall be in a form approved by the Borough Clerk and shall be accompanied by a permit fee in the amount established by this chapter in § 157-4 herein.

- D. Upon approval as provided for in this Chapter, a permit shall be issued, and be readily available for inspection by Borough officials at all times at the site of the filming.
- 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 Clerk may, at the request of the applicant, issue a new or amended 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.

§ 157-4. - Permit fees.

- A. Permit Fees. The imposition of fees shall not preclude the Borough from seeking payment or reimbursement for additional expenses incurred by the Borough.

- (1) Major film permit: \$750 a day.
- (2) Intermediate film permit: \$500 a day.
- (3) Minor film permit:; \$150 a day.

- B. Notwithstanding the above schedule of fees, the Borough Clerk, Police Chief, and Parking Authority hereby have authorization to waive any administrative fees, and waive or decrease permit fees in extenuating circumstances or when a film does not meet the criteria of major, intermediate and minor as defined in § 157-2. - Definitions.

- C. Reimbursement of Costs.

(1) It is intended by this section that the Borough of Westwood incur no unreimbursed costs which must be expended in order to reasonably deal with health, safety and welfare concerns generated by the filming. Said costs may include for example: fire inspector, sanitarian, police, public works or similar persons or agencies. At the time of issuance of the permit and in addition to the requisite fee, the Borough Clerk shall seek an escrow deposit in an amount equal to the estimated costs to be incurred, if any, for the individuals herein discussed. Such estimate will be based upon the approximate hourly cost for the individuals involved times the estimated number of hours which they may be compelled to expend. At the conclusion of the filming any unexpended balance will be refunded.

(2) If the Fire Official determines that the Borough's volunteer Fire Department and/or Ambulance Corps are required to stand by during all or a portion of the film shoot, arrangements are to be made directly with the Fire Chief and/or Ambulance Corps Captain respectively. A donation to the volunteer organization is customary in such situations.

§ 157-5. - Exceptions to permit requirements.

- A. No permit shall be required for:

- (1) Filming by news media as defined in this chapter.
- (2) Filming for private social activities, including weddings, unless the filming or photographing of such events is sold, leased, rented or used for any commercial purposes, including reality television, in which case, a permit shall be obtained and all fees paid.

- (3) Filming activities or still photography conducted for use in a criminal investigation or civil or criminal court proceeding, but not including films or photographs which are sold, leased or used for any commercial purpose.
 - (4) Filming or still photography conducted solely for private non-profit, personal or family use, including real estate sales purposes of selling an individual residence.
 - (5) Filming activities or still photography conducted by or for the Borough of Westwood.
 - (6) Filming which requires no more than three crew members and no other equipment except two (2) cameras and two (2) tripods.
 - (7) A student film, provided that the makers and the school shall agree in writing that if the student film is ever released for commercial purposes, all permit costs and fees shall be due and payable as provided for in this Chapter. All fees other than the permit fee, set forth in Section 5-4, shall apply.
 - (8) Permit fees may be waived at the discretion of the Borough Clerk for non-profit organizations with a valid 501c3 status.
- B. In the event that any of the above activities require the use of commercial vehicles, a permit shall be obtained notwithstanding the fact that no fee is imposed.

§ 157-6. - Requirements for applicants.

- A. Liability insurance. Before a permit is issued, a certificate of insurance will be, for bodily injury to any one person, in the amount of \$1,000,000 and, for any occurrence, in the aggregate amount of \$3,000,000, as well as, for property damage, for each occurrence, in the aggregate amount of \$500,000. The Borough officers and employees shall be named as additional insured. The certificate shall not be subject to cancellation or modification until after 30 days' written notice to the Borough. A copy of the certificate will remain on file.
- B. Workers' compensation insurance. An applicant shall conform to all applicable federal and state requirements for workers' compensation insurance for all persons operating under a permit.
- C. Hold harmless agreement. An applicant shall execute a hold harmless agreement as provided by the Borough prior to the issuance of a permit under this chapter. This agreement will be in writing, whereby the applicant agrees to indemnify and save harmless the Borough of Westwood from any and all liability, expense, claims or damages resulting from the use of public lands.
- D. Security deposit. To ensure cleanup and restoration of the site, an applicant may be required to submit a refundable security deposit in the form of a cash bond as follows: the posting of a cash bond of \$500 or a maintenance bond of \$1,000 running in favor of the Borough and protecting and ensuring that the location utilized will be left, after filming, in a satisfactory condition, free of debris, rubbish and equipment, and that due observance of all Borough ordinances, laws, and regulations will be followed. Within 14 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.

- E. Child labor laws. An applicant shall conform to all applicable child labor laws, including but not limited to N.J.S.A. 34:2-21.57 to 34:2-21.64 and N.J.A.C. 12:58-4.14.
- F. Off-Duty Police. Off-duty police officers shall be required during filming if:
 - (1) Firearms, pyrotechnics or other hazardous materials are to be used;
 - (2) Any actors or crew-members are to be wearing costumes that resemble the uniforms of any type of public personnel;
 - (3) Any streets or lanes are to be closed; or
 - (4) The filming involves activities in which a police presence is necessary to protect the health, safety or welfare of the residents of Westwood.
- G. Parking lots and meters spots. An applicant shall be required to arrange with the Parking Authority for the use of parking in a municipal lot or metered spot(s).

§ 157-7. - Granting of a permit; rules and regulations.

- A. Permits shall not be transferrable.
- B. A permit may be denied if:
 - (1) The Director of Public Works and/or Police Chief determines that closing a street will cause a substantial risk to public safety or interfere with street maintenance work, or a previously authorized excavation permit.
 - (2) The filming activity will substantially interfere with municipal functions or the scheduled maintenance of Borough buildings or grounds.
 - (3) The activity creates a substantial risk of injury to persons or damage to property.
 - (4) The applicant failed to complete the application after being requested to do so, or the information contained in the application is found to be false in any material detail.
 - (5) The activity violates federal, state, or local law including licensing or permit requirements.
 - (6) The applicant has failed to obtain or provide proof of insurance, as required in §157-6 above.
 - (7) The applicant has failed to submit the appropriate application fee in the manner required in § 157-4 above.
 - (8) Filming may violate any regulation in Subsection 157-7.C below.

When the grounds for permit denial can be corrected by imposing reasonable conditions, the Borough may impose such conditions rather than denying the permit.

- C. Regulations upon Receipt of Permit.
 - (1) The permit holder 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 Police Department with respect thereto.
 - (2) The permit holder shall conduct its activities in such a manner so 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 permit holder shall avoid any interference with previously scheduled activities upon Borough property and, limit, to the extent possible, any interference with normal activities.

- (3) Where a permit holder's activities, by reason of location or otherwise, affect any business(es), merchants or residents, the permit holder will give these parties at least 48 hours notice prior to the film/photography shooting date(s).
- (4) The permit holder shall make every effort to minimize the inconvenience caused by filming and shall provide a designee who will respond to residents' concerns and for ensuring the obtaining of off-duty Police assistance, the placing of "no parking" signs and other traffic control devices (under the direction of the Parking Authority, but at the applicant's expense), providing advance notice to affected property owners/businesses and cleanup and restoration of all property, including streets, affected by the filming.
- (5) All filming and/or photography must be completed by the time specified in the permit. Any extension to this time must be approved by the Borough Clerk.
- (6) The permit holder shall pay all fees, and obtain all permits and licenses required for its activity under local, state and federal law and pay any fees associated therewith.
- (7) The permit holder shall abide by all governmental fire regulations.
- (8) The permit holder shall disclose to the Borough and obtain permission for any: use of stunts, pyrotechnics, open flames, vehicle crashes or hazardous materials.
- (9) The permit holder shall conceal police, fire and other official uniforms worn by actors, when the actors are not on camera.
- (10) The applicant shall file a request for the use of Borough logos, insignias, badges or decals, and abide by any restrictions imposed.
- (11) The Borough shall receive credit on the project that shall read: "Thanks to the Borough of Westwood." The credit shall have a blank space above and below the credit so that it stands apart from and not on a list of like credits.
- (12) The permit holder shall provide the Borough with five (5) different publicity stills. The stills will be used by the Borough solely for promotional purposes, including, but not limited to encouraging tourism and film-making. The applicant shall give the Borough proper acknowledgment for any assistance provided in making feature, television, or commercial productions.
- (13) The permit holder shall immediately report all accidents, injuries, health incidents or damage to property to the appropriate public authority.
- (14) Cleanup. 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 shooting at the scene and restored to the original condition before leaving the site.
- (15) Filming in residential zones shall be permitted only between the hours of 7:00 a.m. and 9:00 p.m., provided that all requests for night scenes shall be approved in the permit.

- The setup, production and breakdown required by all filming shall be included in the hours as set forth herein.
- (16) The Borough Clerk may authorize filming other than during the hours herein described. In determining whether to allow an extension of hours under this subsection, the Clerk shall consider the following factors:
 - (a) Traffic congestion at the location caused by vehicles to be parked on the public street;
 - (b) The applicant's ability to remove film-related vehicles from the public streets;
 - (c) When the applicant is requesting restrictions on the use of public streets or public parking during the course of the filming;
 - (d) The nature of the film shoot itself, e.g., indoors or outdoors, day or night; and
 - (e) Prior experience of the film company/applicant with the Borough, if any.
 - (17) Copies of the approved permit will be sent to the Borough of Westwood Police and Fire Departments before filming takes place and to the New Jersey Film Commission. The applicant shall permit the Fire Department or other Borough inspectors to inspect the site and the equipment to be used. The applicant shall comply with all safety instructions issued by the Fire Department or other Borough inspectors. A fire extinguisher must be maintained on site at all times.
 - (18) In addition to any other fees or costs mentioned in this chapter, the applicant shall reimburse the Borough for any lost revenue, repairs to public property or other revenues that the Borough was prevented from earning because of filming.
 - (19) If an applicant wishes to utilize Bergen County property within the Borough of Westwood, the applicant must obtain a permit from the Bergen County Film Commission and the Borough of Westwood.
 - (20) Weapons. If weapons, including but not limited to guns, knives, swords, cannons, machetes, rifles, and bow and arrows, are used during filming, the applicant must notify the Borough of Westwood Police Department of same, even if these weapons are only props.
 - (21) Pyrotechnics. If an applicant wishes to use pyrotechnics, they must submit their plan, including the date, time, location and amount of explosives, to the Borough of Westwood Fire Chief.
 - (22) Drones. Drone operation may be permitted in accordance with FAA rules and regulations. See <https://www.faa.gov/uas/>. Operations over people and property are not allowed without a waiver, in which case they will be allowed if a waiver request is submitted and approved.
https://www.faa.gov/uas/commercial_operators/part_107_waivers/.

§ 157-8 Violations and penalties.

Any person violating this chapter or these rules and regulations, upon conviction thereof, shall be punishable as provided in Chapter 1, General Provisions, Article III, General Penalty, of the

Code of the Borough of Westwood. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

§ 157-9 Appeals.

Any person aggrieved by a decision of the Borough Clerk denying or revoking a permit or a person requesting relief from any requirements of §§ 157-3 through 157-7 of this chapter may appeal to the Borough Council. A written notice of appeal setting forth the reasons for the appeal shall be filed with the Clerk. An appeal from the decision of the Clerk shall be filed within 10 calendar days of the Clerk's decision. The Borough Council shall set the matter down for a hearing within 10 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 supporting the decisions of the Borough Clerk at the first regularly scheduled public meeting of the Borough Council after the hearing of the appeal, unless the appellant agrees in writing to a later date for the decision. If such a resolution is not adopted within the time required, the decision of the Clerk shall be deemed to be reversed, and a permit shall be issued in conformity with the application, or the relief from any requirements of §§ 157-3 through 157-7 of this chapter shall be deemed denied.

Section 2. If any section, subsection, part, clause or phrase of this Ordinance shall be declared invalid by judgment of any court of competent jurisdiction, such section, subsection, part, clause or phrase shall be deemed to be severable from the remainder of this Ordinance.

Section 3. This Ordinance shall take effect immediately upon final passage and publication as required by law.

Adopted: _____

Approved:

Attest:

John Birkner, Jr., Mayor

Karen Hughes, Borough Clerk