

ORDINANCE NO. 2010-26

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, ADDING CHAPTER 15, "COMMERCIAL FILMING" TO THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TO REQUIRE A PERMIT FOR COMMERCIAL FILMING IN THE CITY OF TOMBALL, TO ESTABLISH POLICIES, PROCEDURES AND REGULATIONS AS THEY RELATE TO FILMING; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN \$500 FOR VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SAVINGS AND SEVERABILITY; PROVIDING FOR PUBLICATION; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

* * * * *

WHEREAS, the City of Tomball is blessed with historical or vintage residential and commercial structures; and

WHEREAS, such resources are of interest to filmmakers as locations for films and videos of all varieties; and

WHEREAS, the use of such resources often require the use of publicly owned facilities, property, and equipment; and

WHEREAS, the City of Tomball wishes to encourage the use of the City of Tomball as a location for filming and videotaping, consistent with the duty of the City to protect the City's resources and citizens, and

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

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. The Code of Ordinances of the City of Tomball is hereby amended by adding a new Chapter 15, to read as follows:

CHAPTER 15. COMMERCIAL FILMING

ARTICLE I. GENERALLY.

Sec. 15.1 Purpose.

(a) This ordinance is intended to protect the personal and property rights of Tomball's residents and businesses. The City Manager may impose additional regulations in the interest of public safety if deemed necessary.

(b) These guidelines cover requests for commercial use of City-owned property, City-owned equipment, city employees and private property in the filming of movies, television and cable shows, commercials, and related activities. The approved use of said property, equipment, and employees may affect adjacent public or private property.

(c) *Commercial Filming Project* means the filming of a movie, TV show, commercial or related activity that occurs on city-owned property, city right-of-way, city park, city street or other city controlled area, or occurs on private property if the activity will affect such city controlled areas, or use city employees, city-owned equipment, or city-owned property.

Sec. 15.2 City Control and Authority.

(a) The City Manager may authorize the use of any street, right-of-way, or public building, city-owned equipment, or city employees for commercial uses in the filming or taping of movies, television programs, commercials, training films and related activities.

(b) The City shall have full control over the use of public streets and buildings of the City while being used as well as control over the hours of production and the general location of the production. The City reserves the full and absolute right to prohibit all filming or to order cessation of filming if determined to be detrimental to the public health, safety or welfare.

(c) The City may inspect all structures, devices, and equipment to be used in connection with the filming and taping if required by the City Manager.

Sec. 15.3 Use of City Personnel.

(a) The applicant shall pay for the costs of any Police, Fire, Public Works, or other City personnel assigned to the project (whether specifically requested by the applicant or not).

(b) The City Manager has the authority to require additional police or fire coverage if it is determined to be in the best interest for public safety. Off-duty police officers or firefighters are to be paid one and one-half their hourly rate.

(c) The City Manager will provide the applicant an estimate of the additional city personnel, other than the personnel requested by the applicant, necessary for the safe completion of the project.

Sec. 15.4 Use of City Property.

(a) In conjunction with the use of any street, right-of-way, public building, name, trademark, logo, or equipment of the City, the City Manager may require that all or part of the fee specified or determined for such use be paid in advance. A security or damage deposit may also be required at the City Manager's discretion.

(b) The City Manager shall establish a fee schedule for the use of City property and city equipment. The City Manager may, with respect to a specific request for use of property or city equipment, establish rates that are adequate to compensate the City for the use of that property or equipment if the standard rate schedule is inapplicable or inappropriate for the specific use proposed.

(c) The City shall have full control over the use of the name, trademark and logo, public streets, and buildings of the City while being used, as well as control over the hours of production and the general location of the production.

Sec. 15.5 Special Equipment and Vehicles.

The applicant shall provide a report listing the number of vehicles and types of equipment to be used during the filming including their proposed hours of use and their proposed parking locations. Such locations shall be specifically approved by the City so as to maintain traffic safety. On-street parking, use of public parking lots, use of exterior lighting, power generators, or any other noise or light producing equipment is subject to the City Manager's approval.

Sec. 15.6 Hours of Filming.

Unless special permission has been obtained from the City Manager in advance, filming will be limited to the hours of 7:00 a.m. to 9:00 p.m. on weekdays, 8:00 a.m. to 8:00 p.m. on Saturdays and holidays, and noon to 7 p.m. on Sundays.

Sec. 15.7 Notification of Neighbors.

The applicant shall provide a short written description, approved by the City Manager, of the schedule for the proposed production to the owners and residents of each property in the affected neighborhood. The description shall provide a telephone number through which the residents of the affected neighborhood may communicate to the applicant. The applicant shall make reasonable attempts to accommodate the concerns of the residents of the affected neighborhood, and shall report to the City Manager a summary of all such communications, along with the name, address, and phone numbers of all contacted residents.

Sec. 15.8 Certificate of Insurance.

The producer shall provide a certificate of insurance, naming the City of Tomball as an additional insured, showing coverage in at least the following amounts:

- (a) General commercial liability, including bodily injury and property damage: \$1,000,000;
- (b) automobile liability (combined single limit): \$1,000,000;
- (c) umbrella coverage: \$5,000,000;
- (d) Additional Insurance Requirement: If a commercial filming production schedule involves activities that are considered exceptionally dangerous, including but not limited to stunts, pyrotechnics, special effects, aerial photography, amplified sound, or the use of animals, the producer shall provide a certificate of insurance showing an additional \$5,000,000 for the umbrella coverage, for a total of \$10,000,000 in umbrella coverage;
- (e) Exceptions to Insurance Requirements: If a commercial filming project meets all of the minimum criteria established below, then the producer or business owner shall not be required to provide a certificate of insurance. However, the producer or business owner will still be required to adhere to all the applicable regulations set forth in this Chapter. In order to be excepted from the insurance requirements of this Section, the following minimum criteria shall be met:
 - (1) The filming will not utilize any street, right-of-way, public building, city-owned equipment, city employees, or name, trademark, logo of the City, for use in the filming or taping, or other activities,

- (2) The City will not require inspections of any structures, devices, or equipment to be used in connection with the filming and taping,
- (3) The City will not incur any costs for Police, Fire, Public Works, or other City personnel assigned to the project (whether specifically requested by the applicant or not),
- (4) The City will not require a security or damage deposit as determined by the City Manager's discretion,
- (5) The filming will not require the City Manager to approve any on-street parking, use of public parking lots, use of exterior lighting, power generators, or any other noise or light producing equipment,
- (6) The filming will not take place outside the hours of 7:00 a.m. to 9:00 p.m. on weekdays, 8:00 a.m. to 8:00 p.m. on Saturdays and holidays, and noon to 7 p.m. on Sundays, and
- (7) The filming will not have a distinguishable affect on any residential neighborhood or other residential property.

Sec. 15.9 Hold Harmless Agreement.

The applicant shall sign the following Hold Harmless Agreement holding the City harmless from any claim that may arise from their use of designated public property, right-of-way, or equipment in conjunction with the permitted use:

I certify that I represent the firm which will be performing the filming/taping at the locations specified on the attached permit application. I further certify that I and my firm will perform in accordance with the direction and specifications of the City of Tomball and that I and my firm will defend, indemnify and hold harmless the City of Tomball for and from any loss, damage, expense, claims and costs of every nature and kind arising out of or in connection with the filming/taping to this permit.

Sec. 15.10 Liability.

The applicant agrees to pay in full, promptly upon receipt 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 restore the property to its condition prior to production.

Sec. 15.11 Permit.

It shall be unlawful for any person to undertake a commercial filming project unless a valid permit has been issued by the city. Commercial filming projects underway before the effective date of this article must be permitted within ninety days of the effective date of this article.

Sec. 15.12 Application.

(a) Before filing an application for filming, the applicant is encouraged to contact the City Manager to discuss the production's specific filming requirements and the feasibility of filming.

(b) Application for a Commercial Filming Permit shall be made with the City Secretary by the commercial producer. The application shall be made on a form designed by the city, and shall include the following information:

- (1) The title of the commercial, film, or photo shoot;
- (2) The type of production to be undertaken;
- (3) The location of the filming;
- (4) The dates of the filming;
- (5) Contact information for the production office, producer and location manager;
- (6) Production schedule and activities to include stunts, pyrotechnics, special effects aerial photography, amplified sound or use of animals;
 - (a) Any pyrotechnics will require a special permit and prior approval and authorization from the Fire Marshal;
 - (b) Fire suppression (i.e., fire extinguishers) or other suitable means of extinguishment may be required; and
 - (c) All open flames, including those used during construction, shall be monitored for re-ignition for no less than 10 minutes.
- (7) Number of persons involved with the production, including cast and crew;

- (8) Anticipated need of City personnel, equipment or property;
 - (9) Description of any areas in which public access will be restricted during production;
 - (10) Description of any alterations that will be made to the property;
 - (a) Any and all building or structures constructed, renovated, or used for filming are subject to inspection prior to use;
 - (b) Construction of sets may require building permits;
 - (c) Any wiring or lighting other than temporary cords may require electrical permits pulled by State of Texas Licensed Master Electricians;
 - (d) Any plumbing or air conditioning work not portable in nature may require permits pulled by State of Texas licensed contractors; and
 - (e) Toilet facilities (portable toilets) must be provided for workers and maintained in a sanitary condition.
 - (11) Number and type of production vehicles that will be used and the locations where they will be stored;
 - (12) Location where the crew will be fed, if not at the production location;
 - (13) Location where extras will be held, if not at the production location, and
 - (14) Food vending will require health permits from Harris County Health Department.
- (c) The application form shall include an acknowledgement by the applicant of the restrictions provided, and an affirmation that the operations to be conducted will comply.
- (d) An application processing fee of \$25.00 shall accompany each application for filming. The City Manager may waive this fee for non-profit organizations.
- (e) The City Manager may request additional information if useful or necessary to assist in making the necessary determinations.

Sec. 15.13 Application Approval Requirements.

- (a) The Application must be approved before the commencement of filming or any other substantial activity related to the project.
 - (1) for commercial or episodic television, the application should be approved at least seven (7) business days in advance;
 - (2) for feature films, the application should be filed ten (10) business days in advance.
- (b) The City Manager may grant exceptions to this requirement for good cause.

Sec. 15.14 Refund of Application Fees; Transferability; Expiration.

- (a) The applicant shall not be entitled to a refund of any fees paid in accordance with this division for any cause whatsoever.
- (b) A license issued pursuant to this division shall be deemed personal to the licensee and shall not be assignable. However, the license may be transferred from one location or place of business to another location after the City Manager shall have been given five days' notice of such proposed transfer, and the City has given consent thereto.
- (c) The license shall expire 45 days after the last date of scheduled filming on the application, unless an express expiration date is required by the City Manager.

Sec. 15.15 Vested Rights Not Created by Issuance.

No license granted under this division shall be deemed the granting of a vested right, but such license shall remain subject to such legislation as shall be promulgated by the city council by ordinance.”

Section 3. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of

this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed five hundred (\$500.00) dollars for each offense.

Section 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's home rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7TH DAY OF FEBRUARY 2011.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21ST-DAY OF FEBRUARY 2011.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary