

ORDINANCE 2024-11

AN ORDINANCE OF THE BOROUGH OF SOUTH RIVER, COUNTY OF MIDDLESEX, STATE OF NEW JERSEY, AMENDING THE BOROUGH CODE OF THE BOROUGH OF SOUTH RIVER, SO AS TO CREATE CHAPTER 43, ENTITLED "FILMING PERMITS"

BE IT ORDAINED by the Mayor and Borough Council of the Borough of South River, County of Middlesex, and State of New Jersey, as follows:

SECTION 1. Chapter 43 of the Borough Code of the Borough of South River is hereby amended so as to create Chapter 43 entitled "FILMING PERMITS" to read entirely as follows:

§43-1. Purpose and Intent

The intent of the Borough in adopting this filming and broadcasting chapter is to facilitate entertainment industry work performed in the Borough while safeguarding the interests of Borough residents and businesses. The chapter delegates responsibility for processing applications and permits within the Department of Administration under the direction and supervision of the Administrator which will be dedicated to responding to the needs and issues pertaining to entertainment industry work.

§43-2. Permits for filming and broadcasting.

- A. Any producer that wishes to perform entertainment industry work, including filming or broadcasting, on public property must first obtain a permit.
- B. Permits are issued under the authority of the Administrator on behalf of the Borough Council.
- C. Permits are issued to the producer.
- D. A permit is required for each location where filming or broadcasting will take place.
- E. All permit applications will be processed on a "first come, first served" basis. If two or more permit applicants request the same date and the same location, the filming or broadcasting application that was received first shall be first eligible for approval.
- F. Duration of permits. Permits shall be valid for a minimum of one day and a maximum of 30 days calculated from the date of issuance. Longer filming or broadcasting periods require additional permits and payment of the established application and permit fees.
- G. A permit will specify the filming or broadcasting that may occur at a particular location at a particular time. The permit will authorize element(s) to be performed as part of the filming or broadcasting provided that the elements have been approved by the Administrator after consultation with the appropriate Department.
- H. Where the application includes a request to close all or any portion of a Borough street, lane and/or sidewalk, the request shall be evaluated under and the closure must comply with all pertinent sections and subsections of this chapter applicable to the filming or broadcasting at issue.

- I. A producer that receives a permit is responsible for knowing and complying with all other laws, including other ordinances and regulations that establish prerequisites, authorizations and other required permissions applicable to the filming.
- J. Where permitted filming or broadcasting includes advertising signs or other displays of commercial speech, the signs and/or displays must be removed upon the expiration of the permit.
- K. Notwithstanding any other part of this Code, any producer that performs filming or broadcasting without receiving a permit, violates the material terms of a permit, or is otherwise in violation of this entertainment filming and broadcasting ordinance, shall be subject to the provisions of § 43-11.
- L. Notice. Applicants are required to provide written notice to any residents, businesses, and merchants located within a three-block radius of the site. The notice shall state the location and approximate duration, and describe the nature and extent of the filming or broadcasting. The notice shall be provided no later than the date and time contained in the permit. The applicant shall provide the Administrator proof that notice was provided within 24 hours of the notice date and time.
- M. Hold harmless/indemnification. Applicants must agree in writing to hold harmless and indemnify the Borough and its officials, employees, and agents for any and all claims, liabilities, judgments, and damages, including reasonable attorneys' fees and costs of suit, resulting from death, bodily injury, or property damage arising out of or in any way connected with their filming or broadcasting activities.
- N. Additional police protection. If the South River Chief of Police determines that additional police protection/manpower is necessary to maintain peace and good order and control traffic and spectators at the site of a filming event, the cost thereof determined by the Chief of Police shall be paid by the applicant in accordance with § 155-3.2, Chapter 72, Department of Public Safety, Article III- Off-duty police officer compensation of Chapter 155 of the Code. The applicant may be required to execute an agreement with the Borough setting forth the terms and conditions of the arrangement.
- O. While it is the intent of the Borough to honor each permit, the issuance of such permit shall not grant the producer a constitutionally protected property interest.

§43-3. Exemption from filming or broadcasting permit requirement.

- A. The following types of filming and broadcasting are exempt from the permitting requirement of § 43-2 above. This provision does not exempt a producer from complying with other applicable code provisions, laws, ordinances or regulations that require elements or other activities included in the filming or broadcasting to be permitted or approved by the appropriate governmental entity.
 - (1) First Amendment activity.
 - (a) Filming or broadcasting associated with any permitted or unpermitted parade, rally, protest or demonstration, except when the same is staged for the sole purpose of being included in the filming's final product.
 - (b) Filming or broadcasting associated with any permitted or unpermitted parade, rally, protest or demonstration, except when using vehicles or equipment.
 - (c) Filming or broadcasting associated with an outdoor event that is authorized by a Borough-issued outdoor special event permit, as defined in this chapter, except when the same is staged for the sole purpose of being included in the film's or broadcast's final product.

- (2) Other than First Amendment activity.
 - (a) Coverage of news or matters of public importance by print, broadcast, or electronic media.
 - (b) Filming of limited duration intended primarily for personal, documentary, or promotional purposes that does not involve a movie studio or production company.
 - (c) Filming or broadcasting occurring on public property involving the use of handheld devices.
 - 1. For the purposes of this section, handheld devices shall mean Film, still or television cameras, video cameras or other equipment which are held in the photographer's or filmmaker's hand and carried at all times with the photographer or filmmaker during the course of filming. Handheld devices shall not include cables or any other item or equipment not carried by the photographer or filmmaker at all times during the course of photography, filming or transmission.
 - 2. If such activity does not involve the assertion by any means of exclusive use of all or any section of the public property
 - 3. For purposes of this subsection, standing on public property while using a handheld device and not otherwise asserting exclusive use by any means is not activity that requires a permit.

§43-4. Filming and broadcasting elements.

- A. An applicant shall indicate on the application each of the elements listed below that will be included in the filming or broadcasting. The final decision of whether to allow the element shall be made by the Administrator after consultation with the Borough department head. Prior to denying permission to perform an element, the Administrator and a representative from the department shall consult with the producer in an attempt to find alternative ways to accommodate the producer's filming needs.
- B. This section applies to the activities listed below only when they occur on public property. Where the element requires approval from an additional governmental jurisdiction, the producer must obtain that approval as well. The elements are as follows:
 - (1) Nighttime filming or broadcasting with the use of outdoor lighting where a residence exists within 150 feet from the location of an outdoor light;
 - (2) Filming or broadcasting in buildings that are owned by the Borough or leased to a third party by the Borough, or in buildings of which the Borough is a lessee;
 - (3) Use of public property that is owned, leased or maintained to or by the Borough;
 - (4) Use of a temporary structure that requires permitting by any local, county, state or federal agency;
 - (5) Closure of all or any section of a street, lane and/or sidewalk;

- (6) Use of pyrotechnics or other explosives;
- (7) Use of smoke effects, water effects, or flame effects;
- (8) Display of real or artificial fire arms, grenades, or other weapons that would cause the public to fear violence;
- (9) Vehicle chases and/or vehicle crashes;
- (10) Dangerous stunts that have a reasonable likelihood of causing substantial personal injury;
- (11) Use of large or any other equipment that has a reasonable likelihood of causing damage to public property;
- (12) Filming or broadcasting in a Borough park or from a Borough beach or boardwalk; and
- (13) Use of wild animals controlled under federal, state, or county law and/or ordinances.

§43-5. Processing of Permit Applications.

- A. A producer that wishes to perform filming or broadcasting must submit to the Administrator a completed application and the application fee set forth in § 43-10 below. Where the producer is an organization, corporation or other entity, the application must be signed and submitted by an individual authorized to bind the producer.
- B. The application shall include, but not be limited to, the following:
 - (1) The filming or broadcasting project name;
 - (2) The name and contact information of the applicant, including postal address, email address, and telephone number;
 - (3) A valid photo identification of the applicant;
 - (4) The name and contact information of the producer (if the applicant is not the producer);
 - (5) The dates, times and locations of the filming or broadcasting for which a permit is being requested, and a general description of the filming or broadcasting activity that will occur at each location;
 - (6) A description of any elements that may be performed during the filming or broadcasting, including the dates, times and locations of each;
 - (7) A description of any aspects of the filming or broadcasting, other than the elements, that may require Borough services;
 - (8) A description of any assistance the producer may need from the Administrator and Department of Administration, and/or concerns that the producer wants the Administrator and Department of Administration to be aware of; and

- (9) Where the producer is a student, an official letter or document from her/his school confirming that s/he is currently enrolled there. In addition, the student must appear in person at the Department of Administration and present her/his current student identification card and a valid driver's license. Where the student does not have a driver's license, s/he may present a different form of identification that includes her/his photo.
- C. There is no deadline by which a permit application must be submitted to the Administrator; however, where a permit application includes a request for a street closure, the closure portion of the application will not be approved unless it is received at least 10 business days prior to the closure.

§43-6. Permit denials.

- A. The Administrator may deny an application if the Administrator reasonably determines that one or more of the below-listed conditions exists. Prior to denial, the Administrator shall make reasonable efforts to consult with the producer in an attempt to resolve issues of concern and/or find alternative ways to accommodate the producer's filming or broadcasting needs.
- (1) The filming or broadcasting poses an unreasonable risk of personal injury or property damage to people or property not associated with the filming or broadcasting;
 - (2) The filming or broadcasting poses an unreasonable risk of damage to public property;
 - (3) Filming or broadcasting would unreasonably interfere with the use and enjoyment of adjoining properties;
 - (4) Filming or broadcasting would unreasonably impede the free flow of vehicular or pedestrian traffic;
 - (5) The location sought is not suitable because the proposed use cannot reasonably be accommodated in the proposed location;
 - (6) The applicant is unlikely to comply with the material terms of the requested permit;
 - (7) Filming or broadcasting would endanger the public's health, safety, or welfare, or otherwise create a public nuisance;
 - (8) Filming or broadcasting would negatively affect residents' quality of life;
 - (9) Filming or broadcasting would negatively impact local businesses;
 - (10) Filming or broadcasting would unduly strain Borough resources;
 - (11) Noncompliance with the provisions of this chapter;
 - (12) Other municipalities' experience with the applicant's activities;
 - (13) The cast or crew's prior criminality;

- (14) The date and time requested for a particular location conflicts with previously issued permits or permissions for filming, broadcasting, outdoor events, or other activities;
 - (15) Use of the location, or use of the location during the date or time requested, would unreasonably interfere with the operation of Borough functions;
 - (16) Use of the location or the proposed activity at the location would violate a law, ordinance, statute or regulation, regardless of whether the illegal activity is part of the message or content of the filming. A permit shall not be denied based upon simulation of an illegal activity where the actual illegal activity is not being performed;
 - (17) The producer owes an outstanding debt to the Borough;
 - (18) The producer previously caused significant damage to public property and, at the time of submitting the application under consideration, failed to adequately repair the damage or pay in full the Borough's invoice for damage repair and restoration of services;
 - (19) The producer previously violated this chapter, including without limitation by violating a material condition and/or restriction of a permit;
 - (20) The applicant made a material misrepresentation or gave incorrect material information on the application.
- B. Where the Administrator reasonably determines that one or more of the conditions set forth above exists and that the application should therefore be denied, the Administrator shall issue a written communication to the applicant that includes an explanation for the denial.
 - C. In the event that permission to perform an element is denied, the Administrator will process the remainder of the application and grant all other aspects of the filming or broadcasting for which the requirements have been met.
 - D. In no event shall the Administrator's or any Borough employee's evaluation of whether to grant or deny the application, including any of the elements, include consideration of: a) the race, color, creed, religion, gender, age, disability, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, political affiliation or associational relationships of the applicant, producer or any person associated with the filming; or b) the message or content of the filming.

§43-7. Appeal.

- A. Grounds for appeal. An aggrieved applicant may appeal the denial of a permit, or the imposition of any conditions imposed thereon, in accordance with the procedures set forth below.
- B. Time for appeal. The appeal must be submitted in writing to the Administrator no later than seven business days following the decision denying or conditionally approving the permit.
- C. Appeal panel. The appeal will be reviewed by the South River Borough Council. The appeal will be adjudicated based on the written submission of the applicant.
- D. Standard of review.
 - (1) The denial of a permit, or the imposition of any conditions thereon, may be overturned only upon a showing by clear and convincing evidence that the filming or broadcasting will not produce any of the negative effects upon which the original denial was based.

- (2) The denial of a permit pursuant to § 43-5 may be overturned only upon a showing by clear and convincing evidence that the filming or broadcasting:
- (a) Will not result in the negative effects identified in §43-5;
 - (b) Will be completed in less than three days;
 - (c) Will take place largely in the interior of a residential dwelling;
 - (d) Will not violate any applicable Borough zoning ordinance;
 - (e) Will comply with all other provisions of this section.
- E. Decision on appeal. The South River Borough Council shall issue a written decision affirming, reversing, or modifying the original determination no later than 30 days following the filing of the appeal.

§43-8. Responsibilities of producer once permit is obtained.

- A. A producer or producer's designee must have the permit on site at the time and location of the filming or broadcasting, and must also have on site any other permits required for that location by the Borough or any other governmental agency.
- B. A producer must confine filming to the locations, times, guidelines and conditions specified in the permit and must abide by all other material terms of the permit.
- C. Permits are not transferable.
- D. A producer must clean and repair the filming location, and restore it to the condition it was in immediately prior to the filming, unless otherwise agreed upon in writing by the Administrator and the producer. The Administrator will inspect the filming location after the filming is completed to ascertain whether this requirement has been met. Where a producer fails to fulfill this requirement, the Administrator will bill the producer for the cleaning, repair and/or restoration costs borne by the Borough, and the producer must pay the invoice in full within 30 days of receipt.
- E. A producer shall remove all equipment, debris and other rubbish from the filming location upon the completion of filming or the expiration of the permit.
- F. Permits shall require the producer to notify the Administrator immediately upon learning of any emergency event regarding or arising from the filming or broadcasting that involves the media, the police or fire departments or emergency medical services.
- G. Vehicle parking. Only vehicles with permits issued by the South River Police Department will be allowed to park in areas designated for the rigging or shooting activity at the time(s) and location(s) described in the applicable permit.
- H. Dolly track or other equipment. No dolly track or other equipment may be laid across a street or block a fire lane without prior approval of the Administrator and the South River Police Department.

- I. Pyrotechnics. The use of pyrotechnics, fire effects and explosions, including simulated smoke and smoke effects, shall be conducted only upon authorization by the New Jersey Division of Fire Safety or other approval agencies and subsequent approval shall be obtained from the Administrator prior to shooting.
- J. Animals. The use of wild animals shall be used only upon authorization by the appropriate New Jersey department or agency, and subsequent approval shall be obtained from the Administrator prior to shooting.
- K. Potentially dangerous activities. Conduct or activities associated with rigging or shooting permits which are determined by the Administrator to cause a potential danger to persons or property will be referred by the Administrator for approval by the South River Police Department or other governmental agency having jurisdiction over such activity. Such activities shall include, but not be limited to, the use of stunts, helicopters, firearms or simulated firearms.
- L. Trees and plantings. Trimming, damaging, removing or cutting trees or vegetation on public property is prohibited without the prior approval of the Administrator.
- M. Street structures. No street signs, lights, postal boxes, parking meters or any other permanent street structure may be removed or altered without the prior approval of the Administrator and/or local, state or federal agencies charged with maintaining such structures.
- N. Production location access. If determined by the Administrator to be appropriate, permittees shall submit a mitigation plan for minimizing the potential inconvenience to residents and/or businesses caused by rigging or shooting activities.
- O. A producer is responsible for:
 - (1) Knowing and complying with all Borough ordinances and other laws applicable to the filming or broadcasting and to the other activities arising from the producer's permit; and
 - (2) Requiring and using commercially reasonable efforts to enforce the requirement that any person working for or at the direction of the producer (including without limitation contractors) complies with all Borough ordinances and other laws applicable to the filming or broadcasting and to the other activities arising from the permit.
- P. The requirements above shall include without limitation that the producer is responsible for obtaining any and all permissions, licenses or other required authorizations for use of intellectual property, including intellectual property which is on public property but is not owned by the Borough.
- Q. Notwithstanding issuance of permit pursuant to this article, a producer is prohibited from acting or claiming to act as a representative or agent of the Borough or Administrator, and from indicating Borough endorsement of the filming or broadcasting, except as otherwise agreed to in writing by the Administrator. This provision shall not prohibit the producer's use of the Borough logo in the filming credits.
- R. The Administrator shall require that notification be given to residents and businesses within a three-block radius of a location for which a permit has been issued. The Administrator may provide the notification, may require the producer to provide the notification, or may utilize a different mechanism for providing notification. The notification must state that a filming or broadcasting permit has been issued, and must include the date(s), time(s), location(s) and activities that are authorized by the permit. The Administrator shall determine the most effective means and timing of notification based upon factors such as the type of impact that the filming or broadcasting will have on the neighborhood, the time between receipt of the application and commencement of the filming or broadcasting, the producer's budget and previous communications from a neighborhood regarding notification preferences.

§43-9. Other Permit Requirements.

After a permit has been approved by the Administrator, it will be issued once the following have occurred:

- A. The producer signs an indemnification provision on the permit whereby the producer agrees to indemnify the Borough and its officials and employees from all claims, losses and expenses, including attorneys' fees and costs, that may arise from the permit and any of the activities performed pursuant to the permit by, on behalf of, or at the direction of the producer, except to the extent that that claims, losses and/or expenses are caused by the negligence or intentional misconduct of the Borough, its officials and/or employees.
- B. The producer signs a provision agreeing to comply with all applicable environmental laws, including an agreement not to allow legally prohibited contaminants from entering the sewage and stormwater drainage systems serving the area where the filming or broadcasting will occur. The producer must sign a separate indemnification clause, such as the one described in Subsection A immediately above, that pertains specifically to environmental breaches and includes without limitation the fines and cleanup costs associated therewith;
- C. The producer obtains insurance coverage in an amount determined by the Borough's risk manager, covers the Borough as an additional insured on the policy, and provides proof of the coverage in a manner established by the Borough's risk manager;
- D. The producer pays the permit fee and any other applicable fees set forth in § 43-10 below

§43-10. Other Permit Requirements.

- A. The Borough shall collect all applicable fees arising pursuant to this chapter. These fees are set forth below, and in other sections of the Code pertaining to the cost of services or goods provided by other Borough departments.
 - 1. Nonrefundable application fee. A filming or broadcasting permit application must be accompanied by a nonrefundable application fee in the amount set forth below. An application shall not be deemed complete until the application fee is received by the Borough Clerk.
 - i. Except for students: \$300.
 - ii. For students: \$25.
 - 2. Filming or broadcasting permit fee. A permit authorizes all filming or broadcasting for a particular project during a calendar month, regardless of the number of filming or broadcasting locations. A permit is valid through the last day of the calendar month and may be renewed for additional calendar months.
 - 3. Standard permit fee. The following fees apply when the completed permit application is submitted to the Administrator more than three business days prior to the effective date of the permit:

- i. For original filming or broadcasting permit, except for students: \$300.
 - ii. For each renewal permit, except for students: \$300.
 - iii. For students, valid for length of filming project: \$25. Monthly renewals not required.
 4. Rush permit fee. Where a completed filming or broadcasting permit application is submitted to the Administrator three or fewer business days prior to the intended effective date of the permit, the producer must pay the standard permit fee plus the rush fee set forth below in this subsection. Additionally, where a producer submits an application more than three business days prior to the intended effective date of the permit, the producer voluntarily may pay the standard permit fee plus the rush fee in order to have the application processed within three or fewer business days.
 - (a) Except for students: \$300.
 - (b) For students: \$25.
 5. Cancellation fee. Except as set forth in § 43-10A(6) below, a filming or broadcasting permit fee is nonrefundable.
 6. A filming or broadcasting permit fee is refundable if cancellation is required because of extraordinary circumstances for which the producer is not responsible and which are not within the producer's control. Inclement weather, except for declared states of emergency, and common illness shall not be deemed extraordinary circumstances.
- B. Street closures permits — minimum notice. A full street closure will not be permitted unless the application or change request is submitted at least five business days prior to the closure.
- C. Rush fees may not be utilized for full street closure requests.

§43-11 Violations and Penalties.

Any person who violates any provisions of this article shall, upon conviction, be punished as provided in Chapter 1, Article I, General Penalty. Each violation of any of the provisions of this article and each day that such violation continues shall be deemed and taken as a separate and distinct offense.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Borough Council of the Borough of South River, in the County of Middlesex, State of New Jersey, held on February 26, 2024, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the 11th day of March, 2024, at 7:00 p.m., or as soon thereafter as this matter can be reached, at the Council Chamber of the Criminal Justice Building located at 61 Main Street, South River, New Jersey, and/or virtually via Zoom meeting code 826 6082 9597: password: 000000 at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.


Introduced 2-26-24

COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilwoman Balazs</i>		X	X			
<i>Councilman Ciulla</i>			X			
<i>Councilman Dziemian</i>			X			
<i>Councilman Gurchensky</i>			X			
<i>Councilman Krenzel</i>			X			
<i>Council President Oliveira</i>	X		X			

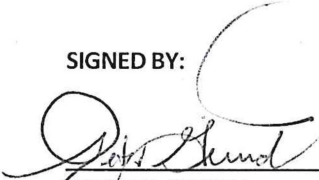

 ALYSSA HAGER, RMC
 BOROUGH CLERK

Adopted 3-11-24

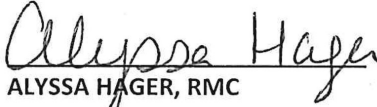
COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilwoman Balazs</i>	✓		✓			
<i>Councilman Ciulla</i>			✓			
<i>Councilman Dziemian</i>			✓			
<i>Councilman Gurchensky</i>			✓			
<i>Councilman Krenzel</i>			✓			
<i>Council President Oliveira</i>		✓	✓			


 ALYSSA HAGER, RMC
 BOROUGH CLERK

SIGNED BY:


 PETER S. GUINDI

ATTESTED BY:


 ALYSSA HAGER, RMC