

Authority: Item 37, Economic Development
and Planning Committee
Report:09-016 (PED09219)
CM: August 13, 2009

Bill No. 179

CITY OF HAMILTON

BY-LAW NO. 09-179

To Regulate Location Filming in the City of Hamilton

WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5 through 7 of subsection 10(2) authorize by-laws respecting: the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; and the provision of any service or thing that it considers necessary or desirable for the public;

AND WHEREAS section 425 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that *Act* is guilty of an offence;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, further authorizes the City of Hamilton, amongst other things, to delegate its authority, to provide for inspections and inspection orders and to impose fees or charges on persons for services or activities provided or done by or on behalf of it and for the use of its property including property under its control;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:

- (a) "business day" means a day on which the City's administrative offices are open for business;

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- (b) “BDC” means the City of Hamilton’s Business Development Consultant of the Hamilton Film and Television Office or his or her designate;
- (c) “City” means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;
- (c) “City premises” means land owned by the City and the buildings on it, but does not include a City road;
- (c) “City road” means a road under the jurisdiction of the City;
- (f) “Council” means the Council of the City of Hamilton;
- (g) “Director” means the City of Hamilton’s Director of Economic Development or his or her designate;
- (h) “filming event” means filming, videotaping, photography or any other form of visual recording for a feature film, television film, television program, documentary, commercial, music video, educational film or other purpose outside a studio or film laboratory, but does not include street interviews, newscasts, press conferences or visual recordings for personal purposes only;
- (i) “film permit” means a permit issued under this By-law for a filming event;
- (j) “Officer”
 - (i) means a Municipal Law Enforcement Officer appointed under any City by-law or any other person assigned or appointed to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law; and
 - (ii) includes, for the purposes of exercising any power of entry under this By-law, a police officer;

- (k) "person" includes a natural person, an association, a corporation, a body politic or a partnership whether acting by themselves or by a servant, agent or employee and the heirs, executors, administrators, successors and assigns or other legal representative of such person; and

- (l) "road" includes, but is not limited to, a common and public highway, street, avenue, alleyway, lane, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between lateral property lines thereof.

Prohibitions

- 2. No person shall undertake or permit the undertaking of a filming event without a valid film permit issued for the filming event.

- 3. No person shall participate in a filming event unless there is a film permit issued for the filming event.

Film Permit Application

- 4. A person who intends to undertake a filming event shall apply to the BDC for a film permit.

- 5. Every person who applies for a film permit shall make their application at least 10 business days in advance of the filming event, provided that an application for a filming event that involves a road closure, potentially hazardous activity or an activity requiring Council approval shall be made at least 30 business days in advance.

- 6. A person who applies for a film permit shall provide the BDC with:
 - (a) the person's name, signature, position, organization, municipal address, telephone number, fax number and e-mail address;

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- (b) the name, position, organization, municipal address, telephone number, fax number and e-mail address of a location supervisor, an individual who will carry out the responsibilities listed in section 18;
 - (c) the contact name, position, legal name, municipal address, telephone number, fax number and e-mail address of the individual or organization undertaking the filming event;
 - (d) the type and purpose of the filming event;
 - (e) the location of the filming event;
 - (f) the date(s) and day(s) of the week when the filming event is to be held and, if the filming event is postponed, an alternative date(s), day(s) of the week; and
 - (g) for each date of the filming event, the time that set-up will commence, the time that the filming event will commence, and the time the filming event will finish including clean-up time;
 - (h) any potentially hazardous activities associated with the filming event;
 - (i) any fee or charge to be paid in respect of this By-law or a film permit issued under it, including a fee or charge for a film permit; and
 - (j) any additional information, documentation, fee or charge for the purposes of administering this By-law as requested by the BDC.
7. In addition to complying with section 6, a person who applies for a film permit for a filming event using City premises or a City road shall provide the BDC with:
- (a) the location on City premises or the City road(s) to be used for the filming event;
 - (b) evidence of insurance, satisfactory to the BDC;
 - (c) a signed release, satisfactory to the BDC, releasing the City from responsibility or liability in conjunction with the death or personal injury of any person or any

damage or loss of property caused by the filming event or by the operation of this By-law;

- (d) a signed indemnity, satisfactory to the BDC, indemnifying and saving harmless the City from all claims of any type which may be brought against the City as a result of or in connection with the use of City premises or a City road by the applicant and the individual or organization undertaking the filming event specifically acknowledging that the City will not be responsible for any liability arising from the use with respect to advertising or any copyright or trademark infringements;
 - (e) an advance payment in the form of cash, a money order or a certified cheque in an amount equal to the anticipated City fees and charges for the filming event;
 - (f) a security deposit in the form of cash, a money order, a letter of credit or a certified cheque in an amount satisfactory to the BDC; and
 - (g) any licence, permit, approval, agreement or other type of permission required to use City premises or a City road in addition to a film permit.
8. Where a provision of any licence, permit, approval, agreement or other type of permission required to use City premises or a City road conflicts with a provision of this By-law, the provision of the licence, permit, approval, agreement or other type of permission prevails.
9. No person applying for a film permit shall knowingly provide false information to the BDC.

Issuance, Refusal or Revocation of Film Permit

10. The BDC shall not issue a film permit except upon receipt of a proper, completed application and payment of all fees and charges for the film permit, including payment under subsections 7(e) and (f) if required.

11. The BDC may issue a film permit, refuse to issue a film permit or may issue a film permit imposing conditions as a requirement of obtaining and continuing to hold it, including, but not limited to, conditions that:
 - (a) a notice setting out the location, date and time of the filming event, the name and number of this By-law, the telephone number of the Hamilton Film and Television Office and other information as required be delivered not less than 5 business days in advance of the filming event to all affected homes, businesses, institutions, Business Improvement Areas, business associations or neighbourhood groups as determined by the BDC; and a copy of such notice be provided to the BDC;
 - (b) reduce or eliminate the impact of the filming event on neighbouring premises;
or
 - (c) responsible authorities, including but not limited to Hamilton Emergency Services - Fire, the Hamilton Police Service and the City's Community Services Department (e.g. Culture Division), Planning Department (e.g. Building Services Division and Parking and By-law Services Division) and Public Works Department (e.g. Capital Planning and Implementation Division and Operations and Maintenance Division), be consulted and provide all necessary approvals for the filming event.

12. In considering the issue, refusal or issue with conditions of a film permit, the BDC may have regard to:
 - (a) whether or not, considering past filming events, the filming event is likely to be carried out in compliance with the film permit and this By-law;
 - (b) a conflict with previously scheduled activity for which the City has issued a licence, permit, approval or other type of permission;
 - (c) the disruption of City work of any type;
 - (d) whether or not the filming event may result in damage to the City's assets, including but not limited to cultural and heritage resources;

- (e) the disruption of traffic or public transit;
 - (f) the response of the Hamilton Police Service to the application;
 - (g) whether or not the filming event may result in a threat to public safety or conflict with City by-laws or policies;
 - (h) the number and frequency of past filming events at the same location.
13. In addition to considering subsections 12(a) to (h) inclusive, in considering the issue, refusal or issue with conditions of a film permit for a filming event using City premises or a City road, the BDC:
- (a) will request and have regard to comments from the City Department, Division or Section responsible for the City premises or City road; and
 - (b) may have regard to whether or not the filming event involves anything that:
 - (i) is derogatory to or exploitative, directly or indirectly, of any person or groups of persons;
 - (ii) may, in light of prevailing community standards, cause offence;
 - (iii) has violent or sexual content.
14. At any time after a film permit has been issued by the BDC, the BDC may revoke the film permit or impose a condition on the film permit upon giving verbal notice, in person or over the telephone, or written notice by regular mail, fax or e-mail to the person who applied for the film permit or the location supervisor.

General – All Film Permits

15. Sections 16 to 20 inclusive apply to all film permits.
16. The BDC may modify the time period prescribed for submitting an application for a film permit set out in section 9 or for the delivery of a notice set out in section 11.

17. The person who applied for the film permit and the organization undertaking the filming event as identified in the film permit shall comply with any conditions imposed under section 10 and shall ensure that the location supervisor complies with section 18.

18. While a filming event is underway, the location supervisor shall:
 - (a) be present at the filming event;
 - (b) produce the filming permit to the BDC, an Officer or any police officer on his or her demand;
 - (c) ensure that there is a minimum of disruption to businesses, residents and institutions during the filming event;
 - (d) ensure proper site security and safety;
 - (e) ensure that waste generated by the filming event is dealt with in accordance with the City's Solid Waste Management By-law and, to the greatest extent possible, ensure compliance with the City's target of recycling 65% of all waste;
 - (e) ensure compliance with any conditions imposed under section 10 that are required to be carried out while the filming event is underway; and
 - (f) advise the BDC of the name, position, organization, municipal address, telephone number, fax number and e-mail address of the location supervisor, should there be any change in this information as identified in the film permit.

19. The person who applied for the film permit, the organization undertaking the filming event as identified in the film permit, the location supervisor and the participants in the filming event shall not do or permit to be done anything that may:
 - (a) constitute a nuisance;
 - (b) cause injury to the occupants of neighbouring premises;
 - (c) constitute a breach of any by-law, statute, order or regulation of any municipal, provincial, federal or other competent authority, including those pertaining to filming, special events, parks, cemeteries, fees, charges, work within a road,

signs, traffic, parking, noise, pyrotechnics, alcohol, firearms, building and smoking and including the "Ontario Traffic Manual, Book 7" and "The Section 21 Health and Safety Advisory Committee Safety Guidelines for the Film and Television Industry in Ontario".

20. A film permit:
- (a) shall not be transferable from one person to another, from one filming event to another, from one date and time to another nor from one location to another without the written permission of the BDC; and
 - (b) shall expire when the filming event finishes as indicated on the film permit.

General – Film Permits for using City Premises or a City Road

21. Sections 22 to 28 inclusive apply to film permits for a filming event using City premises or a City road.
22. (a) The BDC may use the advance payment and the security deposit for a film permit to pay for City fees and charges or for City damages, costs or expenses for the filming event.
- (b) If the City fees and charges and the City damages, costs or expenses are more than the amount of the advance payment and security deposit provided, the BDC will invoice the difference.
- (c) If the City fees and the City damages, costs or expenses are less than the amount of the advance payment and security deposit provided, the BDC will return the difference.
23. The BDC may deliver an invoice under subsection 22(b) by regular mail or fax to the person who applied for the film permit or the organization undertaking the filming as identified in the film permit and they shall pay within 15 business days of the date of mailing or faxing.
24. The person who applied for the film permit, the organization undertaking the filming event as identified in the film permit and the location supervisor shall not make or

permit to be made any alterations to City premises without the prior written approval of the BDC.

25. The person who applied for the film permit and the organization undertaking the filming event as identified in the film permit shall ensure that the location supervisor complies with section 24 of this By-law.
26. The location supervisor shall clean up and restore City premises or a City road immediately following the finish of the filming event.
27. The City and any utility may enter at any time to carry out their services or activities on City premises or City roads during a filming event.
28. The person who applied for the film permit, the organization undertaking the filming event as identified in the film permit and the location supervisor shall not permit:
 - (a) anything that:
 - (i) may, directly or indirectly, injure the name or reputation of the City; or
 - (ii) would be refused approval or classified as an adult sex film by the Ontario Film Review Board; or
 - (b) a product resulting from the filming event to be included in any project that:
 - (i) may, directly or indirectly, injure the name or reputation of the City; or
 - (ii) would be refused approval or classified as an adult sex film by the Ontario Film Review Board.

Administration and Enforcement

29. The Director and BDC are authorized to administer this By-law, including the authority to impose conditions on a permit as necessary to ensure compliance with this By-law and to prescribe the format and content of any forms or other documents required under this By-law.

30. The City's Director of Parking and By-law Services is authorized to enforce this By-law and may assign or appoint Officers to enforce this By-law.
31. Fees or charges referred to under this By-law, including a fee or charge for a film permit, shall be as set and approved by Council from time to time and, unless otherwise specified, the person who applied for the film permit or the organization undertaking the filming event shall pay all fees or charges.
32. Unpaid fees or charges set and approved under section 31 constitute a debt to the City and may be added to tax roll and collected in the same manner as municipal taxes.
33. An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - (a) this By-law;
 - (b) a condition of a film permit; or
 - (c) an order made under s. 431 of the *Municipal Act, 2001* in respect of this By-law.
34. For the purposes of an inspection under section 33, an Officer may:
 - (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; or
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
35. An inspection order made under section 34 may be served by giving verbal notice, in person or over the telephone, or written notice by regular mail, fax or e-mail to the person who applied for the film permit or the location supervisor.

36. An Officer may, pursuant to an order under section 438 of the *Municipal Act, 2001*, undertake an inspection for a purpose described in section 33 and exercise powers described in section 34 where he or she has been prevented or is likely to be prevented from carrying out an inspection under sections 33 and 34, provided that:
- (a) unless otherwise provided in the order, the conditions set out in section 435 of the *Municipal Act, 2001* apply; and
 - (b) in the case of an order authorizing an inspection of a room or place actually being used as a dwelling, the occupier is given notice concerning the inspection in accordance with subsection 438(5) of the *Municipal Act, 2001*.
37. This By-law may be cited as the "Hamilton Film Permit By-law".
38. If a court declares any provision of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force and effect.

Penalties

39. Every person who fails to comply with this By-law is, upon conviction, guilty of an offence and is liable to a fine of not more than:
- (a) \$5,000 for a first offence;
 - (b) \$25,000 for a second offence; or
 - (c) \$100,000 for a third or subsequent offence.

Amendments, Repeals and Enactment

- 40.(1) The "Policy for Filming on Streets and Property under the Jurisdiction of the City of Hamilton" is repealed.

- (2) The “Policy for Special Event Planning” is amended by removing the word “Filming” from the list of Special Events.
- (3) By-law No. 95-125, The Cemeteries Operation By-law for the former City of Hamilton, is amended as follows:
- (a) The following new section is added after section 28 of Part B:
29. “filming event” means filming, videotaping, photography or any other form of visual recording for a feature film, television film, television program, documentary, commercial, music video, educational film or other purpose outside a studio or film laboratory, but does not include street interviews, newscasts, press conferences or visual recordings for personal purposes only;
- (b) Section 26 of Part M is deleted and replaced with the following new section 26:
- Filming 26. While in a cemetery, no person shall undertake or permit the undertaking of a filming event without a valid film permit issued for the filming event under the Hamilton Film Permit By-law.
- (4) By-law No. 03-020, the Noise By-law, is amended by adding the words “or film permit” after each occurrence of “Special Event Permit” in subsection 12(2) including paragraph 12(2)(b).
- (5) By-law No. 01-219, The Parks By-law, is amended as follows:
- (a) The following new subsection is added after subsection (i) and before subsection (j):
- (i.) “filming event” means filming, videotaping, photography or any other form of visual recording for a feature film, television film, television program, documentary, commercial, music video, educational film or

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other purpose outside a studio or film laboratory, but does not include street interviews, newscasts, press conferences or visual recordings for personal purposes only;

- (b) Section 46 is deleted and replaced with the following new section 46:

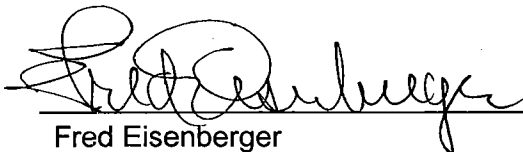
Filming

46. While in a park, no person shall undertake or permit the undertaking of a filming event without a valid film permit issued for the filming event under the Hamilton Film Permit By-law.

- (c) Section 56 is amended by deleting the words "Schedule "B" – Filming".
- (d) Schedule "B" is deleted.

41. This By-law comes into force on the day it is passed.

PASSED and ENACTED this 13th day of August, 2009



Fred Eisenberger
Mayor



Kevin C. Christenson
City Clerk