

**THE CITY OF NEW YORK
MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING**

**NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON PROPOSED
RULES RELATING TO PERMITS ISSUED BY THE MAYOR'S OFFICE OF FILM,
THEATRE & BROADCASTING**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Mayor's Office Film, Theatre & Broadcasting, pursuant to sections 389(b) and 1043 of the New York City Charter, that the Mayor's Office of Film Theatre & Broadcasting ("MOFTB") intends to amend Title 43 of the Official Compilation of Rules of the City of New York, governing the issuance of permits in connection with scouting, rigging and production activities. Matter underlined is new. The proposed amendments are set forth below.

Written comment regarding this proposed amendment may be sent to MOFTB's Communications Department, 1697 Broadway, New York NY 10019, on or before December 13, 2007. Comments may be submitted electronically to such Department at message@film.nyc.gov.

A public hearing will be held on December 13, 2007, at the offices of the Economic Development Corporation, 110 William Street, 4th floor (between Fulton and John Streets) at 10:00 AM. Persons seeking to testify are requested, but not required, to notify the MOFTB the foregoing address not less than five (5) days prior to the hearing. Written comments and a summary of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt, between the hours of 10:00 a.m. and 5:00 p.m., at the offices of MOFTB.

Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are asked to notify the MOFTB at the foregoing address by December 11, 2007.

The proposed rule was not included in the Department's regulatory agenda because the changes to be established by the rule were not anticipated at the time the regulatory agenda was to be published.

This rule was initially published for comment in the City Record on May 25, 2007 and a hearing was held on June 28, 2007. MOFTB extended the comment period through August 3, 2007, and having reviewed comments received, is hereby submitting proposed rules that include revisions of what were previously published.

Title 43 of the Rules of the City of New York is amended by adding a new Chapter 9, to read as follows:

Chapter 9. Permits Issued by Mayor's Office of Film, Theatre and Broadcasting.

Section 9-01. Permits for Scouting, Rigging and Production Activities.

(a) Scope of Rules. The Mayor's Office of Film Theatre and Broadcasting ("MOFTB") shall issue permits in connection with filming, including but not limited to the taking of motion pictures; the taking of photographs; the use and operation of television cameras, transmitting television equipment, or radio remotes in or about city property; load-ins or load-outs supporting indoor performances; or such activities in or about any street, park, marginal street, pier, wharf, dock, bridge or tunnel within the jurisdiction of any City department or agency, or involving the use of any City owned or maintained facilities or equipment. As defined herein, MOFTB will issue permits for scouting, rigging and shooting activities. Obtaining such a permit does not obviate the need to comply with other applicable laws, rules or case law also governing such activity.

(b) Required and Optional Permits.

Unless a permit is designated in these rules as an "Optional Permit", the use of the term "permit" herein shall be deemed to be a "Required Permit".

(1) Required Permits. The following activities require that a permit be obtained pursuant to this chapter:

(i) Filming, photography, production, television or radio remotes occurring on City property, as described in subdivision (a) of this section, that uses vehicles or equipment.

(ii) Filming, photography, production, television or radio remotes occurring on City property, as described in subdivision (a) of this section, if such activity involves the obstruction of one or more lanes of a street or walkway of a bridge, or if such activity results in less than eight feet or one half of the width of a sidewalk or other public pedestrian passageway, whichever is greater, for unobstructed sidewalk use by pedestrian traffic.

(2) The following activities do not require that a permit be obtained pursuant to this chapter:

(i) Filming or photography occurring on City property, as described in subdivision (a) of this section, involving the use of hand-held devices as defined in paragraph three of subdivision (a) of § 9-02, provided that such activity neither involves the obstruction of one or more lanes of a street or walkway of a bridge, nor results in less than eight feet or one half of the width of a sidewalk or other public pedestrian passageway, whichever is greater, for unobstructed sidewalk use by pedestrian traffic.

(ii) Filming or photography of a parade, rally, protest, or demonstration except when using vehicles or equipment.

(3) For purposes of this subdivision (b), "obstruction" shall mean the assertion of exclusive control with respect to the use or occupancy of such space, and "unobstructed sidewalk use" shall mean, with respect to filming or photography occurring on a sidewalk or other public pedestrian passageway, the use of such space that is not an "obstruction".

(4) **Optional Permits:** Persons who are engaged in filming or still photography and are not otherwise required to obtain a permit pursuant to paragraph (1) of subdivision (b) of this section may be issued an Optional Permit.

(i) Persons requesting such an Optional Permit shall provide accurate information concerning their postal address and, if available, e-mail address, telephone number and fax number; and accurate information as to the location(s) of such activities, the date(s) and time(s) during which such activities are proposed to take place.

(ii) MOFTB shall process Optional Permit requests in accordance with the provisions of paragraphs four, five, six, seven, eight, nine and ten of subdivision (b) of § 9-02 of these rules.

(c) **Press passes.** The use of a press pass issued by the New York City Police Department ("NYPD") in accordance with Chapter 11 of Title 38 of the Rules of the City of New York ("Press Credentials"), where an individual is acting in furtherance of the activity authorized by such press pass, and is engaged in filming as defined in these rules, does not require that a permit be obtained pursuant to this chapter.

(d) **Authorization from other agencies:** Notwithstanding the provisions of subdivision (a) of this section, scouting, rigging or shooting activities within City parks or the interiors of City buildings, bridges or tunnels require, if applicable, separate authorization from the City agency with jurisdiction over the location. The use of certain items or activities, including but not limited to animals, firearms (actual or simulated), special effects, pyrotechnics, police uniforms, police vehicles, driving shots with tow or camera rigs, and conditions that require holding of traffic may require authorization and/or assistance from the relevant government agency.

§ 9-02. Processing of Permit Applications.

(a) **Definitions.** For purposes of this chapter, the following terms shall have the following meanings:

(1) "Equipment" shall include, but is not limited to, television, photographic, film or videocameras or transmitting television equipment, including radio remotes, props, sets, lights, electric and grip equipment, dolly tracks, screens, or microphone devices, and any and all production related materials. "Equipment" shall not include (i) "hand-held devices," as defined in paragraph (3) of this subdivision, and (ii) vehicles, as defined in section one hundred fifty-nine of the New York vehicle and traffic law, that are used solely to transport a person or persons while engaged in the activity of filming or photography from within such vehicle.

(2) "Filming" shall mean the taking of motion pictures, the taking of still photography or the use and operation of television cameras or transmitting television equipment, including radio remotes and any preparatory activity associated therewith, and shall include events that include, but are not limited to, the making of feature or documentary films, television serials, webcasts, simulcasts or specials.

(3) "Hand-held devices" shall mean (i) film, still or television cameras, videocameras 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, or (ii) tripods used to support film, still, television cameras or videocameras. Hand-held 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.

(4) "New Project Account application" shall mean a request submitted on an MOFTB form by an applicant indicating that the applicant intends to request one or more permits for scouting, rigging and/or shooting activities.

(5) "Photography" shall mean the taking of moving or still images.

(6) "Pre-permit reserve" shall mean the designation by MOFTB, at the request of a permit applicant, of a location(s) where the applicant intends to conduct rigging or shooting activities.

(7) "Rigging/de-rigging" shall mean the loading in or loading out, loading or unloading, of any shooting or production related equipment, including but not limited to props, sets, electric and grip equipment, at any location, time and date where film or theatrical production is not occurring.

(8) "Same date" shall mean the same actual calendar date (numerical date and month) or the same day of the same week in a given month, as relevant. For example, "same date" shall encompass the date July 11 as well as the second Sunday in the month of July, as relevant.

(9) "Same location" shall mean the location identified in the rigging permit or the filming permit application.

(10) "Scouting" shall mean the act of viewing, assessing and photographing locations for filming or photography during pre-production or production for, including, but not limited to, still photography, feature films, television series, mini-series or specials.

(11) "Shooting" shall include (i) filming interiors or exteriors, and (ii) theatrical productions whose performances are presented indoors.

(b) New Project Account application and Permit application for scouting, rigging and/or shooting activities.

(1) The following two steps shall be taken to obtain a scouting, rigging, and/or shooting permit:

(i) Submission of a New Project Account application to MOFTB.

(ii) At the same time, or some time thereafter, an applicant shall seek a scouting, rigging, and/or shooting permit.

(2) New Project Account Application contents.

Applicants shall complete an application, on a form prescribed by MOFTB, which shall contain detailed identifying information about the applicant and the project. In completing such form, applications shall provide the information set forth below.

(i) A postal address (but not a post office box) and, if available, an e-mail address, a telephone number and a facsimile number for purposes of receiving notification from MOFTB.

(ii) Valid photo identification of the applicant or, if the applicant is not a natural person, a valid photo identification of the natural person authorized by the applicant to act on its behalf in connection with the application.

(iii) If known at the time of the application, the dates and times of scouting, rigging or shooting and location of such activity, and any special circumstances including, but not limited to, information regarding whether the activity involves special parking requests, traffic control issues or special effects.

(iv) Film school students shall provide a letter from the student's school confirming insurance coverage, and the student's current enrollment, subject to the provisions of § 9-03.

(3) Scouting, Rigging and/or Shooting Permit Applications.

When applicants submit a scouting, rigging and/or shooting permit application, on a form prescribed by MOFTB, they shall:

(i) identify the date(s), time(s) and location(s) of such activity;

(ii) identify any special circumstances including, but not limited to, information regarding whether the activity involves special parking requests, traffic control issues or special effects;

(iii) for applicants requesting a scouting permit, provide a letter from the applicant's producing/financing entity verifying the project by name and identifying the natural person(s) on-site who will be performing scouting activities on behalf of the applicant;

(iv) for applicants requesting a scouting permit, provide documents of incorporation, financing documents for the project or grant or foundation award letter.

(4) Processing of Permits.

All permit applications will be processed on a "first come, first served" basis. Upon request by an applicant for a Required Permit, MOFTB will place a pre-permit reserve on the location(s) identified in the New Project Account application or the rigging and/or shooting application. An applicant can request such pre-permit reserve no more than three weeks in advance of the activity, but upon a need demonstrated in writing by the applicant, MOFTB may grant a greater period of time. If two or more permit applicants request the same date and the same location, the New Project Account application request that was received first shall be first eligible for approval.

(5) MOFTB shall respond to the applicant with one of the responses enumerated in subparagraphs (i) through (iii) of paragraph (6) of this section in accordance with the following schedule:

(i) for applications filed 45 days or more prior to the date for which such permit is sought, MOFTB shall respond no later than 30 days after the receipt of such applications;

(ii) for applications filed less than 45 days but more than 15 days prior to the date for which such permit is sought, MOFTB shall respond no later than ten days after the receipt of such applications; or

(iii) for applications filed 15 days or less prior to the date for which such permit is sought, MOFTB shall respond as soon as is reasonably practicable.

(iv) No application may be filed more than sixty days prior to the date of the requested event, unless special circumstances are presented to the commissioner or her designee for approval.

(6) Determination upon review of application. Following receipt of an application, the MOFTB will make one or more of the following determinations:

(i) issuance of the particular permit.

(ii) written notification that more information is needed before MOFTB can make a determination as to a particular permit application.

(iii) written notification that the particular permit application has been denied and a statement of the reason or reasons pursuant to paragraph (7) of this subdivision for such denial.

(7) Denial of new project account applications or scouting, rigging, and/or shooting permit application. MOFTB may deny a permit if any one or more of the following issues exists:

(i) conditions exist that may pose a danger or a threat to participants, onlookers or the general public;

(ii) the location sought is not suitable because the proposed use cannot reasonably be accommodated in the proposed location;

(iii) the date and time requested for a particular location is not available because (A) a permit has previously been issued for such date and time, or (B) the permit request is the subject of a new project account application, as provided in paragraph (4) of this subdivision, or (C) another City agency has issued a permit for such date or time;

(iv) the applicant or any person or entity connected with the applicant has been granted a permit in this or any other jurisdiction and, on that prior occasion, either was found to have violated a material term or condition of the permit, or any law, ordinance, statute or regulation relating to the activity covered by the permit, or engage in activity requiring a permit without having obtained a permit and the MOFTB has determined that as a consequence, granting the application poses a risk that the applicant will violate the provisions of these rules and/or any conditions that may be placed on the permit.

(v) use of the location or the proposed activity at the location would otherwise violate any law, ordinance, statute or regulation;

(vi) use of the location would interfere unreasonably with the operation of City functions.

(8) If the permit has been denied pursuant to subparagraph (i), (ii), (iii), (v) (with respect to location) or (vi) of paragraph (7) of this subdivision, MOFTB shall employ reasonable efforts to offer the applicant suitable alternative locations and/or times and/or dates for the proposed rigging or shooting.

(9) The denial of a permit shall be in writing and shall contain information about the right to appeal such denial unless the applicant, in its application, authorizes MOFTB to issue an oral determination in connection with the filing of the application. Subsequent to the filing of such application, an applicant may request a written determination upon notifying MOFTB in writing that such applicant now seeks a written determination. Upon receiving such request for a written determination, MOFTB shall respond in accordance with the requirements of paragraph (5) of this subdivision, such time to respond commencing on the date of receipt by MOFTB of the notification.

(10) After a permit application is denied, the applicant may appeal a written determination by written request filed with the appeals officer who may reverse, affirm, or modify the original determination and provide a written explanation of his or her finding.

(i) If a permit application is denied more than 30 days prior to the proposed scouting, rigging or shooting, the applicant shall have 10 days from the date that such denial is e-

mailed or faxed to the applicant to appeal such denial. MOFTB shall render a decision on such appeal within 10 days of receipt of such appeal.

(ii) If a permit application is denied more than 10 days and less than 30 days prior to the proposed scouting, rigging or shooting, the applicant shall have 5 days from the date such denial is e-mailed or faxed to the applicant to appeal such denial. MOFTB shall render a decision on such appeal within 5 days of receipt of such appeal.

(iii) If a permit application is denied 10 days or less prior to the proposed scouting, rigging or shooting, the applicant shall have one day from the date such denial is e-mailed or faxed to the applicant to appeal such denial. MOFTB shall render a decision on such appeal as soon as is reasonably practicable.

(c) Responsibilities of Holders of Required and Optional Permits.

(1) Rules: All permittees are subject to the rules of MOFTB, the specific terms and conditions of the permit, and all applicable city, state, and federal laws.

(2) Display of permit: All permittees shall have the permit in their possession on location at the time and site of the scouting, rigging or shooting, as well as any other permits required by MOFTB or any other governmental agency.

(3) Permit restrictions: All permittees shall confine their activities to the locations and times specified on their permit. MOFTB may establish specific guidelines to address conditions that exist at certain designated locations and the use of vehicles and equipment at locations based on, among other considerations, the time of day, weather conditions, season, location, and day of the week.

(4) Non-transferability: Required Permits and Optional Permits are not transferable.

(5) Clean-up: All permittees are responsible for cleaning and restoring the site after the rigging or shooting. The cost of any City employee time incurred because of a permittee's failure to clean and/or restore the site following the rigging or shooting will be borne by the permittee.

(6) Accidents or injuries: Should there be any injuries, accidents, other health incidents or damage to private or City property at a permitted event, the permittee shall notify MOFTB immediately.

(7) Vehicle Parking: Only vehicles with permits issued by MOFTB 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.

(8) 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 MOFTB and NYPD.

(9) Pyrotechnics: The use of pyrotechnics, fire effects and explosions, including simulated smoke and smoke effects, shall be conducted only upon authorization by the New York City Fire Department and subsequent approval shall be obtained from MOFTB and the NYPD prior to shooting.

(10) Animals: The use of wild animals, as defined in Article 161, § 161.02 of the New York City Health Code, shall be used only upon authorization by the Department of Health and Mental Hygiene, and subsequent approval shall be obtained from MOFTB prior to shooting.

(11) Potentially dangerous activities: Conduct or activities associated with rigging or shooting permits which are determined by MOFTB to cause a potential danger to persons or property will be referred by MOFTB for approval by the NYPD 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.

(12) Traffic control: Where a public street is closed in connection with rigging or production activities, a 13.5-foot lane shall be kept open. Such requirement may be waived by MOFTB upon an appropriate showing of need or at the discretion of the NYPD.

(13) Trees and plantings: Trimming, damaging, removing or cutting trees or vegetation on City property is prohibited without the prior approval of the New York City Department of Parks and Recreation.

(14) 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 New York City Department of Transportation or other agency charged with maintaining such structures.

(15) Production location access: If determined by MOFTB 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.

(16) Food services: There shall be no sit-down catered meals permitted on public streets or sidewalks.

(17) Code of Conduct: MOFTB shall issue a location Code of Conduct that addresses the importance of considerate behavior on the set of all rigging and shooting activities. A copy of the Code of Conduct shall be given to holders of Required and Optional Permits under these rules. The permittee is responsible for providing a copy of the Code of Conduct to the cast and crew of each permitted rigging or shooting activity. Permittees shall be required to encourage participants in the permitted event to act in accordance with such code.

(d) Modifications To or Suspension of Required or Optional Permit.

(1) If a permittee seeks to modify its permit, it shall submit an addendum to its original request, which will be governed by the same timetable as provided in paragraph (5) of subdivision (b) of this section.

(2) If MOFTB determines that modifications should be made to the terms or conditions of any permit, or that a permit should be revoked, after notice and opportunity to be heard, MOFTB may do so, based upon reasons set forth in paragraph (7) of subdivision (b) of this section.

(3) If MOFTB revokes any permit prior to the date of the scouting, rigging or shooting, the permittee may appeal the revocation, subject to the time limitations set forth in paragraph (10) of subdivision (b) of this section.

(4) During the course of scouting, rigging or shooting, MOFTB or the NYPD may suspend any permit where public health or safety risks are found or where exigent circumstances warrant such action. Where such suspension occurs, permittees shall be given notice and an opportunity to be heard within ten days after the suspension.

§ 9-03. Indemnification and Insurance.

(a) By accepting a permit, a permittee agrees to protect all persons and property from damage, loss or injury arising from any of the operations performed by or on behalf of the permittee, and to indemnify and hold harmless the City, to the fullest extent permitted by law, from all claims, losses and expenses, including attorneys' fees, that may result therefrom. This indemnification requirement does not apply to any person or entity acting with an Optional Permit in accordance with § 9-01(b)(4).

(b) Every holder of a Required Permit shall maintain, during the entire course of its operations, liability insurance with a limit of at least one million dollars (\$1,000,000) per occurrence. Such insurance shall include a policy endorsement naming the City of New York as an additional insured with coverage at least as broad as provided by Insurance Services Office (ISO) form CG 20 12 (07/98 ed.). The applicant shall provide proof of such insurance prior to the issuance of the permit in the form of an original certificate of insurance signed in ink to which a copy of the required endorsement is attached. For currently enrolled film students, proof of insurance through their school and the student's current attendance shall satisfy this requirement. This insurance requirement does not apply to any person or entity holding an Optional Permit issued in accordance with § 9-01(b)(4).

(c) If MOFTB determines, in light of the activity for which a permit is sought, that such activity may increase the potential for injury to individuals and/or damage to property, and that the minimum limit of insurance should be higher than one million dollars (\$1,000,000) per occurrence, MOFTB shall determine what higher minimum limit is to be required and inform the applicant of such higher limit. Factors to be considered by MOFTB may include, but shall not be limited to, the number of people involved, the location of the activity and the nature of the activity. The applicant shall thereafter provide proof of such insurance in accordance with subdivision (b) of this section. If MOFTB determines in writing that a higher minimum limit is to be required, the applicant may appeal such determination by written request filed with the

MOFTB appeals officer who may reverse, affirm, or modify the determination and provide a written explanation of his or her finding.

(d) MOFTB shall have the authority to waive the insurance required by subdivision (b) of this section where the applicant is able to demonstrate that such insurance cannot be obtained without imposing an unreasonable hardship on the applicant. Any request for a waiver of the insurance required by subdivision (b) of this section shall be included by the applicant in the application submitted to MOFTB under § 9-02 of this chapter. The burden of demonstrating unreasonable hardship shall be on the applicant, and may be demonstrated by a showing, for example, that the cost of obtaining insurance for the permitted activity exceeds twenty-five percent (25%) of the applicant's budget for such activity that is the subject of the application. MOFTB shall take into consideration the applicant's projections of budget as well as the budget projections for comparable productions of similar size and duration in determining whether the cost of obtaining insurance exceeds twenty-five percent (25%) of the budget. MOFTB may also take into consideration its determination that the permitted activity may increase the potential for injury to individuals and/or damage to property. In the event that MOFTB denies a waiver of the insurance requirement, the applicant may thereafter respond to the denial and appeal such denial pursuant to the provisions of § 9-02 of this chapter.

STATEMENT OF BASIS AND PURPOSE

The Mayor's Office of Film Theatre & Broadcasting ("MOFTB") has for many years issued permits in connection with various film production activities. With the recent significant increase in filming activities by both amateurs and professionals, it has become necessary to codify the process that has been followed over time. Such codification is also consistent with the City Charter requirement that agencies whose procedures or requirements affect the general public shall promulgate rules governing such activities. The purpose of this rule is thus to provide clear guidance to the persons and entities in the film industry who seek to obtain such permits.

MOFTB published proposed rules in the City Record on May 25, 2007, held a public hearing regarding the rules on June 28, 2007, and received extensive comments through August 3, 2007. The proposed rules that are set forth herein include changes made as a result of this public comment, and are explained below.

Section 9-01 of the rules describes their purpose, and sets forth both the activities that require a permit and the activities that do not require such a permit. This revised rule incorporates a different approach to determining whether someone needs a permit. As originally drafted, the rule focused on the concepts of the time spent, and numbers of people engaging in the filming activity, as well as the use of tripods.

As revised, a permit would be required if someone (1) uses vehicles or equipment, as defined in the rule or (2) engages in filming activity that results in the obstruction of one or more lanes of a street, or results in less than eight feet of a sidewalk width, or one-half the width (whichever is greater) for unobstructed sidewalk use by pedestrian traffic.

A permit would not required if someone films with a hand-held device and does not obstruct either roadways or pedestrian traffic, as described above. Moreover, a permit is not required if someone is filming or photographing a parade, rally, protest or demonstration using a hand-held device or tripod, which provision was published in the first proposed rules.

"Obstruction," for purposes of this rule, means the assertion of exclusive control with respect to the use, occupancy or appropriation of a street or sidewalk space.

For those people wishing to obtain a permit who are not otherwise required to have one, an "Optional Permit" will be made available upon application. Applicants would have to satisfy several of the requirements set forth in § 9-02, but would not be required to obtain insurance as provided in § 9-03.

Section 9-02 (a) contains definitions of the terms used throughout the rule. Subdivision (b) of this section also describes the New Project Account application which is used for scouting, rigging and/or shooting activities, provides details about the processing of such applications, including MOFTB's review procedures and the right to appeal the denial of a permit application. The permit processing provisions have been clarified to explain the circumstances under which denial of a permit might occur. Subdivision (c) details the responsibilities of permittees, and subdivision (d) addresses the subject of modifications to or suspension of permits.

Section 9-03 sets forth the requirements governing indemnification and insurance. This section would be clarified to provide that those people required to get a permit must also obtain an insurance policy. Those who have obtained an Optional Permit would not be required to secure such a policy.

/s/ _____
Katherine Oliver
Commissioner