

DEKALB COUNTY

ITEM NO. I4

BOARD OF COMMISSIONERS

BUSINESS AGENDA / MINUTES

MEETING DATE: May 10, 2016

HEARING TYPE
Action

ACTION TYPE
Ordinance

SUBSTITUTE

SUBJECT: DeKalb County Film Permitting Ordinance

DEPARTMENT: Board of Commissioners

PUBLIC HEARING: NO

ATTACHMENT: YES

PAGES: 20

INFORMATION CONTACT: Luz Borrero, Deputy COO
(404) 371-2562

PHONE NUMBER: (404) 687-8648

Deferred 3/22/16, 4/26/16

PURPOSE:

To consider adopting the attached ordinance to amend the code of DeKalb County, Georgia, Chapter 15 Article XIII (Film and Audiovisual Production) Film Production and For Other Purposes

NEED/IMPACT:

In 2008, the State of Georgia Enacted the Georgia Entertainment Industry Investment Act. This Act increased the state tax credit to 30% for qualified companies or individuals for the production of motion pictures, television, series, commercials, music videos, interactive games and animation when filmed in the State of Georgia. This tax credit has substantially increased interest in filming and entertainment throughout the State and in DeKalb County.

The proposed ordinance establishes criteria for permitting of filming in DeKalb County. This ordinance facilitates the prompt issuance of film permits and centralizes film permit activity in the Development Services Division of the Department of Planning and Sustainability. This ordinance will additionally protect the interests and quality of life for DeKalb County's residents and businesses by providing a set of regulations regarding the issuance of permits for filming within the County. Because the County incurs various costs for providing support services for these entertainment production events, the attached ordinance additionally enables the establishment of a fee schedule to offset these expenses.

RECOMMENDATION(S):

To approve the attached Ordinance to amend code of DeKalb County, Georgia, Chapter 15 Article XIII (Film and Audiovisual Production) Film Production and For Other Purposes

AN ORDINANCE

**AN ORDINANCE TO AMEND
THE CODE OF DEKALB COUNTY, GEORGIA,
CHAPTER 15,
ARTICLE XIII (FILM AND AUDIOVISUAL PRODUCTION)
FILM PRODUCTION AND FOR OTHER PURPOSES.**

WHEREAS, in 2008 the State of Georgia enacted the Georgia Entertainment Industry Investment Act (the “Act”) that increased the state tax credit to thirty percent (30%) for qualified production of motion pictures, television series, commercials, music videos, interactive games and animation in the State; and

WHEREAS, the Act has resulted in substantial growth of the entertainment industry in Georgia, wherein the State estimated that in Fiscal Year 2014, the economic impact of the entertainment industry in Georgia would exceed five billion dollars; and

WHEREAS, DeKalb County benefits significantly from the entertainment industry’s growth in the State, both economically and culturally, through job creation, employment, patronization of restaurants, hotels and other local businesses, and rental of real property and equipment; and

WHEREAS, DeKalb County offers many inherent benefits to the entertainment industry including a distinctive urban setting combined with rural scenery; a racially, ethnically and culturally diverse workforce with the necessary skills and experience to facilitate entertainment production; and the proximity of Hartsfield-Jackson Atlanta International Airport that makes DeKalb County easily accessible from any location nationally and internationally; and

WHEREAS, DeKalb County requires advance notice of entertainment production events on County property so that it can determine the necessary resources to support entertainment production events, including security, solid waste disposal, traffic control and notification to affected neighborhoods; and

WHEREAS, DeKalb County incurs significant costs from providing support services to facilitate entertainment production events and desires to recoup its administrative costs; and

WHEREAS, DeKalb County is committed to meeting the needs of the entertainment industry while simultaneously sustaining the quality of life of its citizens and businesses; and

WHEREAS, the Governing Authority of DeKalb County is tasked with the protection of the County's public health, safety, and general welfare; and

WHEREAS, DeKalb County's public health, safety, and general welfare require the harmonious, orderly regulation of entertainment production in DeKalb County;

NOW THEREFORE, BE IT ORDAINED by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 15 of the Code of DeKalb County, as Revised 1988, is hereby amended as follows:

PART I. ENACTMENT

By adding the following new Article XIII, sections 15-551 through 15-580 to read as follows:

ARTICLE XIII. FILM PRODUCTION

Sec. 15-551. Scope and purpose.

The governing authority's intent in adopting this ordinance is to facilitate entertainment production events in DeKalb County while safeguarding the interests of DeKalb County's residents and businesses. This ordinance provides the basis for the rules and regulations governing the issuance of permits for filming within the county. It strengthens the county's ability to anticipate and provide necessary support services for entertainment production events to ensure filming is done in a manner consistent with public health, safety and the protection of property.

Sec. 15-552. Definitions.

Words and terms not defined in this article but defined in applicable state law or the Code of DeKalb County, as Revised 1988, shall be given that meaning. All other words or phrases shall be given their common, ordinary meaning unless the context requires otherwise. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them below, except where the text clearly indicates a different meaning:

Applicant means the individual applying for a permit who is legally authorized to bind the Producer.

Application means the documents created by the department that must be completed and submitted to the department to request a Permit.

Department means the planning department.

Director means the director of the planning department or designee.

Element means an activity listed in section 15-556.

Filming means creating motion picture images and all activity attendant to staging, shooting, and associated basecamp operations associated with the production of commercial motion pictures, independent filmography, documentaries, music videos, television shows, and commercials. Filming also means creating still photography images for commercial use and all activity attendant to staging or shooting such images.

Permit means the authorization issued by the department necessary to conduct filming.

Producer means an individual, organization, corporation or any other entity that is responsible for the filming.

Public Property means real property owned by the County, or of which the County is a tenant, including, without limitation, parks, streets, sidewalks, other rights of way, and buildings. Public Property shall not include real property which is being leased by the County to a tenant.

Sec. 15-553. Rules and regulations.

The director may promulgate such rules and regulations, not inconsistent with the provisions of this article, necessary for the administration and enforcement of this article.

Sec. 15-554. Permit required.

- (a) Any producer who wishes to perform filming on public property must obtain a permit prior to filming.
- (b) Any producer who wishes to perform filming on private property must first obtain a permit if filming includes any element listed in section 15-556.
- (c) Permits shall be issued by the department and shall be issued to a producer.
- (d) Any producer who performs filming without receiving a permit, or performs filming that violates the material terms of a permit, or is otherwise in violation of this article, upon citation or summons by the police chief, code enforcement officer or other authorized county employee, and judgment or conviction of the violation in a court of competent jurisdiction, which includes the Magistrate Court of DeKalb County, shall be subject to appropriate penalties as imposed by the court. If convicted of violating any provision of this article, the court shall impose a minimum fine of four hundred ninety-nine dollars (\$499.00) in addition to any other authorized punishment imposed by the court.

Sec. 15-555. Permit exemptions.

The provisions of this article shall not apply to:

- (a) Current news productions, including reporters, photographers or cameramen in the employment of a newspaper, news service, broadcasting station or similar entity engaged in the broadcasting of news events;
- (b) Productions that are conducted by the DeKalb County School System or other government organizations, including but not limited to DeKalb County Television; and
- (c) Filming associated with any rally, protest or demonstration, except when such rally or demonstration is staged for the sole purpose of being included in filming.

Sec. 15-556. Filming elements.

- (a) All applications shall list each element that may be included in filming.
- (b) Elements are as follows:

- (1) Filming outdoors between 11:00 p.m. and 7:00 a.m. within a 300 foot radius of a dwelling unit, residence, place of worship, or business;
- (2) Filming on public property;
- (3) Closure of a street, lane and/or sidewalk;
- (4) Occupation of the right-of-way;
- (5) Use of pyrotechnics or other explosives, smoke effects, water effects, flame effects, or other potentially dangerous instrumentalities;
- (6) Display or use of real or artificial firearms, grenades, or other weaponry;
- (7) Vehicle chases and/or vehicle crashes;
- (8) Dangerous stunts that have a reasonable likelihood of causing substantial personal injury;
- (9) Use of equipment that has a reasonable likelihood of causing damage to public property;
- (10) Filming that includes sound as defined and regulated by the DeKalb County Noise Ordinance, now and as it may be amended hereafter;
- (11) Use or presence of any animal which is naturally inclined to do harm or capable of inflicting serious harm upon human beings, or any animal whose possession or sale is prohibited by federal, state, or local law;
- (12) Public nudity and/or any behavior that would be deemed lewd and lascivious;

(c) The final decision of whether an element is allowed shall be made by the director.

Sec. 15-557. Permit application.

An application shall include the following:

- (a) Project title;

- (b) Name and specific contact information of applicant, including physical address and current phone number;
- (c) Dates, times and locations of the filming;
- (d) Detailed description of the filming;
- (e) Description of all elements that may be performed;
- (f) Applicable insurance policy information and certificates;

Sec. 15-558. Permit modification, suspension, or cancellation.

- (a) After receiving a permit, a producer may request a modification of the permit at any time by submitting a change request in writing and the requisite change fee to the director. The department shall process the change request in the same manner established for processing initial applications.
- (b) A permit may be immediately suspended where the county identifies an imminent or substantial endangerment to the health and welfare of persons, or to property caused by or resulting from the filming; or an actual or imminent violation of the material terms of the permit, this ordinance or any other federal, state or local law.
- (c) A permit may be cancelled where:
 - (1) the department determines that an imminent or substantial endangerment to the health and welfare of persons or to property caused by or resulting from the filming cannot be reasonably eliminated;
 - (2) the department determines that the producer has intentionally or recklessly violated material terms of the permit or this ordinance;
 - (3) the department determines that the producer does not have or has lost insurance coverage.
- (d) If a permit is suspended or cancelled, the department shall give written notice to the applicant setting forth the reasons for permit suspension or cancellation. The applicant or producer shall have an opportunity to respond to a suspension or cancellation notice within seven (7) business days after receipt of the notice by presenting written or oral evidence to the director. A final written decision will be issued by the director within fifteen (15) business days after the applicant or producer has appealed the suspension or cancellation.

- (e) If a permit is under consideration for cancellation or suspension because of health or safety risk and the producer is otherwise in compliance with the permit, the county shall make reasonable efforts to find alternative means to accommodate the producer's filming and to eliminate said health or safety risk and allow filming to proceed.
- (f) If the producer is not in compliance with the permit or suspends or cancels the permit prior to filming, no refund will be issued.
- (g) If the department suspends or cancels a permit prior to filming, the county will refund the permit fee upon written request.

Sec. 15-559. Permit denial.

- (a) The director may deny a permit if any one of the following conditions exists:
 - (1) Filming poses an unreasonable risk of injury or damage to persons or property not associated with the filming;
 - (2) Filming poses an unreasonable risk of irreversible damage to public property;
 - (3) The date and time requested conflicts with other filming or other scheduled events or activities;
 - (4) Filming unreasonably interferes with county functions or operations;
 - (5) Producer owes an outstanding debt to the county;
 - (6) Producer cannot procure insurance;
 - (7) Producer previously violated this ordinance on two or more occasions within the last three years; or
 - (8) Producer made a material misrepresentation on the application.
- (b) If a permit is denied, the department shall give written notice to the applicant setting forth the reasons for permit denial. The applicant or producer shall have an opportunity to respond to a denial within seven (7) business days after receipt of the denial notice by presenting written or oral evidence to the director. A final written decision will be issued by the director within fifteen (15) business days after the applicant or producer has appealed the denial.

Sec. 15-560. Responsibilities after permit issuance.

- (a) The producer shall conduct operations in an orderly fashion with continuous attention to the storage of equipment not in use and the removal of trash and debris. Upon completion of the filming, the premises shall be left in a clean condition. It is the responsibility of the producer to exercise reasonable care in inspecting and immediately repairing any damage to any public property which occurs as a result of filming.
- (b) After filming concludes, the producer shall leave all public property in the same or better condition as it was prior to filming.
- (c) The producer must publicly display the approved permit on site at all times during filming, set up, break down, and related activities.
- (d) The producer, including any employees, contractors and subcontractors, is responsible for knowing and complying with all county ordinances and other applicable federal, state and local laws.
- (e) The producer must give written notification of filming activities to all residents and businesses within a 300 foot radius of the filming and post notices. The notification should be sent within a reasonable time before filming begins. The notification should include the date, time, location, and a general description of the filming activities authorized by the permit.
- (f) Where filming includes advertising signs or other displays of commercial speech, all signs and/or displays must be removed upon expiration of the permit.
- (g) Issuance of an approved permit shall not grant to producer, nor otherwise create, a constitutionally protected property interest.
- (h) Upon receipt of the permit, and by accepting said permit, the producer shall, at its sole cost and expense, fully indemnify, defend and hold harmless the county, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liability and judgments for damages to persons or property, that may arise from the permit and any activities performed pursuant to the permit by, on behalf of, or at the direction of the producer, except to the extent that the claims, losses and/or expenses are caused by the negligence or intentional misconduct of the county, its officials, or employees.

- (i) The producer may be required to hire at its sole expense off-duty police or fire personnel, as determined by County assessment of the public safety risks posed by elements of the filming and related activities.
- (j) The producer shall obtain at its sole expense, and keep in full force and effect during the term of the permit liability insurance as required by the county. Insurance requirements shall be identified on the permit application.

Sec. 15-561. Fee schedule.

The applicant shall pay all such applicable fees, including the following:

- (a) Each application must be accompanied by the non-refundable application fee.
- (b) Producer shall attach payment for the permit fee to the application.
- (c) Where producer requests a material change in the terms of a previously-issued permit, a change fee shall apply. Where the department determines that any requested change is immaterial, no change fee shall apply.
- (d) Where filming requires the presence of law enforcement, fire rescue services, watershed management services, or any other services provided by the county, such services will be paid for by producer accordingly. The fee schedule for such services provided by the county shall be promulgated by the department and approved by official action of the governing authority.

Sec. 15-562. Disclaimer.

By enacting this ordinance the county is assuming an undertaking to promote the general welfare of its citizens. The county, its officers, agents and employees shall not be liable to any person, including but not limited to persons whose names appear on the application or permit, who claim that the enactment, enforcement or violation of this ordinance caused injury or loss of any kind.

Sec. 15-563 – 15-580. Reserved.

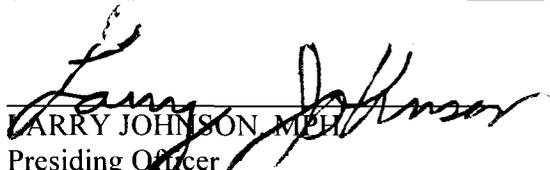
PART II. EFFECTIVE DATE

This ordinance shall become effective thirty (30) days after adoption by the board of commissioners and approval by the chief executive officer.

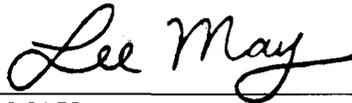
PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

May **ADOPTED** by the DeKalb County Board of Commissioners, this 10 day of May, 2015.

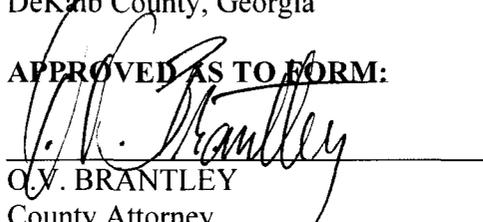

LARRY JOHNSON, MPH
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

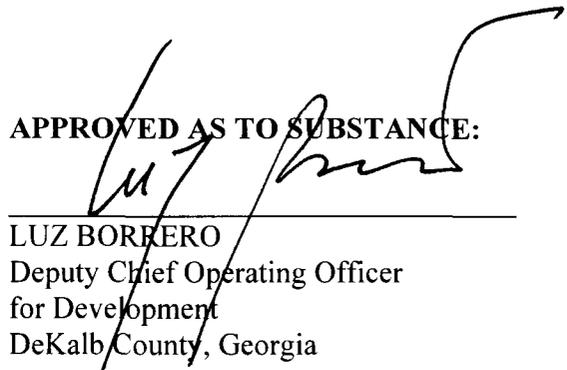
May **APPROVED** by the Chief Executive Officer of DeKalb County, this 12 day of May, 2015.


LEE MAY
Interim Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA SANDERS, CCC
Clerk to the Board of Commissioners
And Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

Q.V. BRANTLEY
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

LUZ BORRERO
Deputy Chief Operating Officer
for Development
DeKalb County, Georgia

March 22, 2016

AN ORDINANCE**AN ORDINANCE TO AMEND
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March 22, 2016

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March 22, 2016

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March 22, 2016

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- (a) Project title;

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- (b) Name and specific contact information of applicant, including physical address and current phone number;
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- (e) If a permit is under consideration for cancellation or suspension because of health or safety risk and the producer is otherwise in compliance with the permit, the county shall make reasonable efforts to find alternative means to accommodate the producer's filming and to eliminate said health or safety risk and allow filming to proceed.
- (f) If the producer is not in compliance with the permit or suspends or cancels the permit prior to filming, no refund will be issued.
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 - (5) Producer owes an outstanding debt to the county;
 - (6) Producer cannot procure insurance;
 - (7) Producer previously violated this ordinance on two or more occasions within the last three years; or
 - (8) Producer made a material misrepresentation on the application.
- (b) If a permit is denied, the department shall give written notice to the applicant setting forth the reasons for permit denial. The applicant or producer shall have an opportunity to respond to a denial within seven (7) business days after receipt of the denial notice by presenting written or oral evidence to the director. A final written decision will be issued by the director within fifteen (15) business days after the applicant or producer has appealed the denial.

March 22, 2016

Sec. 15-560. Responsibilities after permit issuance.

- (a) The producer shall conduct operations in an orderly fashion with continuous attention to the storage of equipment not in use and the removal of trash and debris. Upon completion of the filming, the premises shall be left in a clean condition. It is the responsibility of the producer to exercise reasonable care in inspecting and immediately repairing any damage to any public property which occurs as a result of filming.
- (b) After filming concludes, the producer shall leave all public property in the same or better condition as it was prior to filming.
- (c) The producer must publicly display the approved permit on site at all times during filming, set up, break down, and related activities.
- (d) The producer, including any employees, contractors and subcontractors, is responsible for knowing and complying with all county ordinances and other applicable federal, state and local laws.
- (e) The producer must give written notification of filming activities to all residents and businesses within a 300 foot radius of the filming and post notices. The notification should be sent within a reasonable time before filming begins. The notification should include the date, time, location, and a general description of the filming activities authorized by the permit.
- (f) Where filming includes advertising signs or other displays of commercial speech, all signs and/or displays must be removed upon expiration of the permit.
- (g) Issuance of an approved permit shall not grant to producer, nor otherwise create, a constitutionally protected property interest.
- (h) Upon receipt of the permit, and by accepting said permit, the producer shall, at its sole cost and expense, fully indemnify, defend and hold harmless the county, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liability and judgments for damages to persons or property, that may arise from the permit and any activities performed pursuant to the permit by, on behalf of, or at the direction of the producer, except to the extent that the claims, losses and/or expenses are caused by the negligence or intentional misconduct of the county, its officials, or employees.

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March 22, 2016

15-560. The producer may be required to hire at its sole expense off-duty police or fire personnel, as determined by County assessment of the public safety risks posed by elements of the filming and related activities.

15-561. The producer shall obtain at its sole expense, and keep in full force and effect during the term of the permit liability insurance as required by the county. Insurance requirements shall be identified on the permit application.

Sec. 15-561. Fee schedule.

The applicant shall pay all such applicable fees, including the following:

- (a) Each application must be accompanied by the non-refundable application fee.
- (b) Producer shall attach payment for the permit fee to the application.
- (c) Where producer requests a material change in the terms of a previously-issued permit, a change fee shall apply. Where the department determines that any requested change is immaterial, no change fee shall apply.
- (d) Where filming requires the presence of law enforcement, fire rescue services, watershed management services, or any other services provided by the county, such services will be paid for by producer accordingly. The fee schedule for such services provided by the county shall be promulgated by the department and approved by official action of the governing authority.

Sec. 15-562. Disclaimer.

By enacting this ordinance the county is assuming an undertaking to promote the general welfare of its citizens. The county, its officers, agents and employees shall not be liable to any person, including but not limited to persons whose names appear on the application or permit, who claim that the enactment, enforcement or violation of this ordinance caused injury or loss of any kind.

Sec. 15-563 – 15-580. Reserved.

PART II. EFFECTIVE DATE

This ordinance shall become effective thirty (30) days after adoption by the board of commissioners and approval by the chief executive officer.

March 22, 2016

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2015.

LARRY JOHNSON, MPH
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2015.

LEE MAY
Interim Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA SANDERS, CCC
Clerk to the Board of Commissioners
And Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

O.V. BRANTLEY
County Attorney
DeKalb County, Georgia

LUZ BORRERO
Deputy Chief Operating Officer
for Development
DeKalb County, Georgia