

Memorandum



To: Mr. Rafael Paz, Acting City Attorney, Miami Beach

From: Michael Larkin, Bercow Radell Fernandez Larkin & Tapanes

Subject: Miami Beach City Code Sec. 12-1 Film and Print Production

Date: June 16, 2021

At the May 26, 2021 Commission meeting, during the discussion regarding a proposed amendment to the City of Miami Beach film and production ordinance, a question was raised as to how other jurisdictions deal with violations related to film permits, and whether other jurisdictions have a similar one-year ban (or similar unappealable ban) on the issuance of permits with violations. Below is a summary of research conducted regarding several relevant jurisdictions, as well as a summary of the legislative history on the City's ordinance. In sum, the one-year ban penalty was not found to exist in any other jurisdiction reviewed.

I. Summary and Analysis of City Codes Related to Film Permits.

Miami. In the City of Miami (the "City"), a permit is required conduct any motion picture photography, or electronic (TV) photography for commercial purposes. See Sec. 41-26, City of Miami Code of Ordinances (the "Code"). Any person who violates the section related to film permits shall be fined not more than five hundred (\$500) dollars or imprisoned for not more than sixty (60) days, or both fined and imprisoned. See Sec. 1-13, Code. There is no express language in the Code stating the City must revoke the film permit upon finding a violation.

Coral Gables. In the City of Coral Gables (the "City"), a permit is required to conduct commercial photography. See Sec. 3-605, City of Coral Gables Zoning Code (the "Code"). If there is a violation, the City Manager may revoke the permit. See Sec. 3-605(F), Code. Further, the City Manager may refuse to issue a permit under certain circumstances, for example, if there is evidence previous photography at the same location caused disruption in the neighborhood.

See Sec. 3-605(G), Code. There is no express language stating the City must revoke the permit upon finding a violation.

Palm Beach. In the City of Palm Beach (the "City"), a permit is required for anyone who wishes to film a commercial motion picture. See Sec. 22-151(a), City of Palm Beach Code of Ordinances (the "Code"). If there is a violation of the section related to film permits, the permit holder may be punished by a fine of not more than five hundred (\$500) dollars, or a term of imprisonment not more than sixty (60) days, or both fined and imprisoned. See Sec. 22-127 and Sec. 1-14(a)(2), Code. A penalty for violation of the Code does not bar or preclude other remedies available to the City, legal or equitable, to correct the violation. See Sec. 1-14(c), Code. There is no express language stating the City must revoke the permit upon finding a violation. The City may revoke or suspend the permit, but is not required to.

Orlando. In the City of Orlando (the "City"), a permit is required to conduct motion photography. See Sec. 3.05, City of Orlando Code of Ordinances (the "Code"). If the section related to film permits is violated, the permit holder may be punished by a fine of not more than five hundred (\$500) dollars, or a term of imprisonment not more than sixty (60) days, or both fined and imprisoned. See Sec. 1.08(3), Code. A penalty for violation of the Code does not bar or preclude other remedies available to the City, legal or equitable, to correct the violation. See Sec. 1.08(9), Code. There is no express language stating the City must revoke the permit upon finding a violation. The City may revoke or suspend the permit, but is not required to.

Tampa. In the City of Tampa (the "City"), a permit is required to conduct motion photography. See Sec. 27-282.17, City of Tampa Code of Ordinances (the "Code"). The Code does not expressly speak of revocation or penalties associated with violating the section related to film permits. Generally speaking, a violation of the Code is punishable by a fine of not more than five hundred (\$500) dollars, or a term of imprisonment not more than sixty (60) days, or both a fine and imprisonment. See Sec. 1-6(a), Code. There is no express language stating the City must revoke the permit upon finding a violation. The City may revoke or suspend the permit, but is not required to.

Jacksonville. In the City of Jacksonville (the "City"), a permit is required to conduct motion photography. See Sec. 123.205, City of Jacksonville Code of Ordinances (the "Code"). A violation of the section related to film permits are grounds for immediate suspension of the production until the noncompliance is remedied, but revocation or suspension is not required. See Sec. 123.205(b), Code. Continued failure to comply with the terms and conditions of the permit requirements may result in revocation of the permit. Id. There is no express language stating the City must revoke the permit upon finding a violation. The City may revoke or suspend the permit, but is not required to.

Las Vegas. In the City of Las Vegas (the "City"), a permit is required to conduct motion photography. See Sec. 12.04.020, City of Las Vegas Code of Ordinances (the "Code"). A film permit may be revoked by the Film Administrator at any time when such revocation is deemed necessary to protect the public health and safety or to protect property from imminent harm. See Sec. 12.02.220, Code. There is no express language stating the City must revoke the permit upon finding a violation. The City may revoke or suspend the permit, but is not required to.

New York City. In New York City (the "City"), a permit is required to film motion pictures. See Sec. 13-03, New York City Code of Ordinances (the "Code"). The Mayor's Office of Film, Theatre and Broadcasting (MOFTB) regulates film permits. See Sec. 13-01, Code. If MOFTB determines a permit should be revoked, after notice and opportunity to be heard, MOFTB may do so. See Sec. 9-02, Code. During the course of filming, MOFTB or the NYPD may suspend any permit where public health or safety risks are found or where exigent circumstances warrant such action. Id. Where a suspension lasting longer than six hours occurs, permit holders shall be given notice and an opportunity to be heard within ten (10) days after the suspension. Id. There is no express language stating the City must revoke the permit upon finding a violation.

Los Angeles. In the City of Los Angeles (the "City"), it is a misdemeanor offense to film motion pictures without a permit. See Sec. 41.20, City of Los Angeles Code of Ordinances (the "Code"). Any person who wants to engage in a business that requires a permit must file an application with the Director of Finance. See Sec. 22.00, Code. No permit shall be revoked or suspended until a hearing upon written notice to the permit holder has been given. See Sec. 22.02, Code. There is no express language stating the City must revoke the permit upon finding a violation.

II. Legislative Research – Ordinance No. 2013-3797.

On April 17, 2013, the Miami Beach City Commission had its first reading of the ordinance related to film production permits following the direction from the Neighborhood/Community Affairs Committee at their March 18, 2013 meeting. Commissioner Libbin made a motion to approve the ordinance, Commissioner Tobin seconded. The ordinance passed by a vote of 5-0. Commissioner Gongora suggested referring the item to the Production Industry Council and bringing it back next month. Max Sklar, Tourism Cultural Department Director, stated the item had been discussed at Committee and in front of the Production Industry Council several times.

On May 5, 2013, the City Commission had its second reading of the Ordinance related to film production permits. Staff recommended approval strengthening the enforcement language and penalizing those cited for filming without a permit. Commissioner Tobin moved to amend

the Ordinance to include that no permit will be issued to the violator or their affiliates. Then, Commissioner Libbin made a motion to approve the ordinance as amended. Commissioner Gongora seconded the motion. Vice Mayor Wolfson opposed the ordinance as amended because "the fines are excessive." The Ordinance passed by a vote of 6-1.

At the same time, the City was reviewing the City Code to standardize and streamline enforcement of their Film and Print Ordinance. Commissioner Weithorn suggested there should be enhanced penalties for productions that don't have a permit and perhaps be banned for one year before they can obtain a permit. Weithorn further stated she was concerned with individuals who do not follow the rules; they should be fined with severe penalties, in order to obtain full compliance. Discussion also focused on homeowners that rent houses for film productions without permits. Mayor Bower requested that penalties be enforced to homeowners that rent properties as well.

