

THE CITY OF NEW YORK
MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING
PROPOSED RULES RELATING TO PERMITS ISSUED BY THE MAYOR'S OFFICE OF FILM,
THEATRE & BROADCASTING

Executive Summary

The proposed rules are designed to codify procedures that have existed in practice since the office was established in 1966 as the first film commission in any locality in the nation. MOFTB has always offered free permits requiring only liability insurance under certain circumstances. In addition, if warranted by the activity, it has also offered free police assistance to streamline filming in New York City. The permit has served as the filmer's authorization to interact with, and stage production activity, on City property.

As a general matter, City agencies' procedures for the issuance of permits must be contained in formally adopted rules. The City Charter's rulemaking process requires that City agencies publish proposed rules for public comment. Agencies then review such comments before adopting their rules.

The City has had a law for many years which requires that permits be obtained for certain filming activities in its streets and other public places, and now the MOFTB is adopting rules to formalize the criteria for obtaining such permits.

These revised proposed rules have been drafted to address the concerns that were brought to our attention after the initial publication of the proposed rules in the City Record in May 2007. They are intended to create a process that addresses interference with the use of public space by those engaged in certain filming activities.

Under this new proposal for the film permit rule:

- 1) *a permit to film would be required if:*
 - a) equipment and/or vehicles (as defined) are being used;
 - b) filming activity creates an obstruction (as defined).

In this instance, insurance would be required.

2) A permit to film would **not** be required if:

- a) activity involves only handheld equipment or tripods;
- b) activity does not present an obstruction (as defined); and
- c) activity does not involve vehicles and/or equipment (as defined).

3) If a permit is not required based on the parameters above, individuals may obtain an "optional" permit. In this instance, insurance is **not** required.

4) If a permit is required and the applicant demonstrates that they cannot afford it, a waiver of the insurance requirement may be issued.

How does this proposal differ from the previous one?

We are now proposing a change in the criteria that will form the basis of the requirement to obtain a permit.

- Unlike the originally proposed rules, getting a permit would not depend on whether there is an interaction between two or more people at a single site. Thus, the requirement to obtain a permit would *not* be based upon an expectation that there will be an "interaction among two or more people" at a "single site for thirty or more minutes".

- Unlike the originally proposed rules relating to tripods, getting a permit would not depend on whether there is an interaction among five or more people at a single site. Thus, the requirement to obtain a permit would *not* be based on an expectation that there will be an "interaction among five or more people at a single site" who are using "a single tripod for ten or more minutes".

The new proposal clarifies that the need for a permit is based upon the goal of keeping public passageways and other public spaces clear and unobstructed for pedestrian and vehicular traffic.

(1) Who will need a permit to conduct a photo shoot or to film on City property?

A permit is required in two scenarios: a) if equipment/vehicles are being used as defined; /or b) if filming activity creates an obstruction as defined.

a) As a threshold matter, just as in the originally proposed rules, we would be requiring a permit for filming activities where *vehicles or equipment are being used*.

- "Equipment" is defined, as before, to include but not be limited to television, photographic, film cameras or videocameras or transmitting television equipment, including radio remotes, props, sets, lights, electric and grip equipment, dolly tracks, screens, or microphone devices, and all production related materials.

This definition has been clarified to state that "equipment" does not include "hand-held devices" (such as hand-held cameras and videocameras, and tripods that are used to support film, still, television cameras or videocameras). Moreover, "equipment" does not include vehicles used solely to transport people engaged in filming or photography or a camera within a vehicle that is proceeding with the general flow of traffic.

b) A permit would be required if filming activity would either (1) obstruct one or more lanes of a street or walkway of a bridge; or (2) result in either less than eight feet, or one-half the width of the sidewalk or pedestrian passageway (whichever is greater) being available for unobstructed sidewalk use by pedestrians.

- This does not mean that filming activities cannot take place on a sidewalk if there is room for pedestrian traffic flow. **"Obstruction" means that people are actually prevented from reasonably using the sidewalk: that is, the person filming has asserted exclusive control with respect to the use of such space. If no vehicles or equipment are used, and there is no obstruction, no permit is required.**

Examples:

This new standard means that in effect there must always be a minimum of eight feet available for pedestrian sidewalk traffic in order for filming activities (that result in an obstruction) to take

place without a permit. However, where a sidewalk is narrower -- for example, four or five feet wide -- and a filming activity causes any obstruction as defined, then a permit is required.

(That is, people are actually prevented from reasonably using the sidewalk because the person filming has asserted exclusive control over the sidewalk.)

Example: If filming activity will interfere with pedestrian or vehicular traffic such that it obstructs one or more lanes of a street or walkway to a bridge , a permit would be required.

Example: If a particular sidewalk or pedestrian passageway is ten feet wide, and the filming activity results in pedestrians being prevented from using six feet of the sidewalk and only four feet of the sidewalk space remains available, a permit would be required.

Example: If a particular sidewalk or passageway is ten feet wide and two feet would be obstructed by filming activity, no permit would be required because there would be eight feet of unobstructed pedestrian passage.

Still Photography?

If either equipment or vehicles are used, a permit will always be required. If hand-held devices are being used, one will need a permit if the shooting activity will obstruct pedestrian or vehicular traffic. As to parades, rallies, protests, or demonstrations, a permit will only be required if vehicles or equipment are being used.

Handhelds?

In general, permits are not needed when only hand-held devices are used. However, if someone uses a hand-held device, a permit will be needed if (1) one or more lanes of a street or walkway of a bridge are obstructed, or (2) the filming activity results in less than eight feet of unobstructed sidewalk use as a result of the filmmaker's assertion of exclusive control over the portion of the sidewalk they occupy.

As to parades, rallies, protests or demonstrations filmed with a handheld device, a permit will not be required.

Use of tripods?

In general, because tripods are defined as "hand-held devices", permits would not be needed. However, a permit will be needed by someone using a tripod if (1) one or more lanes of a street

or walkway of a bridge are obstructed, or (2) the filming activity results in less than eight feet of unobstructed sidewalk use as a result of the tripod user's assertion of exclusive control over the portion of the sidewalk they occupy.

As to parades, rallies, protests or demonstrations, the use of a tripod would not require a permit.

●NOTE: Just as in the original proposed rules, we would NOT require a permit for filming a parade, rally, protest or demonstration when using a handheld device. However, if vehicles or equipment are being used for such filming, one will need a permit.

(2) How does someone apply for a permit? What must they show? When could a permit be denied? What happens if the permit application is denied?

One completes an MOFTB new project account application to get a scouting, rigging or shooting permit. One must include identifying information, such as their mailing address and, if available, e-mail address and telephone number, a photo ID, dates and times of shooting (when known). Film school students will have to provide a letter from their schools confirming insurance coverage and current enrollment. More detail would be required thereafter for the scouting, rigging and/or shooting permit application: dates/times/locations of the activity; any special circumstances about the activity; scouting permits will also have to include a letter from the applicant's producing/financing entity verifying the project and identifying the on-site person.

As in the earlier proposal, permits could be denied if one or more of the following issues exist:

- conditions that might pose a danger or threat to participants, onlookers or the public;
- the location sought is not suitable because the use cannot reasonably be accommodated in that location;
- the date and time requested is not available for that location either because a permit has previously been issued for such date and time, or another City agency has issued a permit for that date and time;
- the applicant or any person/entity connected with the applicant has been granted a permit previously, either in NYC or elsewhere, and such person/entity materially violated that permit or any law, or did not obtain permits that were required;
- the use of the location or activity at the location would otherwise violate any law or rule;
- the use of the location would interfere unreasonably with the operation of City functions.

If a permit application is denied, the applicant may appeal that determination by submitting a written request to the MOFTB appeals officer. Under the proposed rules, there are specific time frames within which MOFTB must issue the decision, as well as time frames for someone to appeal and MOFTB to consider that appeal.

(3) What if someone isn't actually required to have a permit under these rules, but wants to get one anyway?

People can get an "Optional Permit" under these revised rules. They would need to present much of the same documentation as those persons seeking a Required Permit (e.g., request for dates, times and locations and contact information) but would not have to show photo ID or obtain insurance.

(4) How will the new proposed rule affect everyday tourists who want to take pictures or videotape themselves and their families on City sidewalks? What about in Parks?

These proposed rules are not intended to apply to tourists who take pictures of themselves or City sights. It is assumed that large groups of tourists will understand the need to allow pedestrian and vehicular traffic flow to be maintained. Where overcrowding of public spaces exists so that there is pedestrian and vehicular obstruction, a police officer is likely to ask the group to move so that traffic flow can be smooth. We will work with the NYPD so that its members become aware of the rules.

Parks Rule 1-05(e) provides that commercial filmmakers must get an MOFTB permit. That means that it is the MOFTB rules which establish the criteria for determining who requires a film permit to film in a park.

(5) Is insurance required to obtain a permit? What if they can't afford it?

Liability insurance in the amount of at least \$1 million is required only of people required to get a permit (i.e., they use equipment or vehicles OR are obstructing roadways/sidewalks).

MOFTB can determine that a higher amount is appropriate, depending on, for example, the number of people involved and the location and nature of the activity.

If a permit applicant can demonstrate to MOFTB that obtaining such insurance would impose an unreasonable hardship, it can be waived. Such applicant can demonstrate this by, for example,

showing that the cost of obtaining insurance exceeds 25% of the project's budget. In considering the waiver request, MOFTB would review the projected budget of the project, factoring in comparable productions of similar size and duration. MOFTB may also consider the potential for injury to individuals and/or damage to property.

Denial of a waiver request may be appealed to MOFTB's appeals officer as provided in the rules.

People who obtain an "Optional Permit" will not have to get such liability insurance.

(6) What happens if someone acts in violation of these rules?

If someone violates the terms of a Required Permit, the MOFTB can suspend, modify or revoke such permit.

It has been the law for many years that those who engage in filming activities without a permit are subject to a fine of not more than \$500 or imprisonment of no more than 90 days, or both. This law is enforceable by members of the NYPD.

If any of the foregoing conduct involves rules or laws enforced by other City agencies, those agencies can take appropriate action.