TO: Honorable Mayor and Members of the City Council
FROM: David Ott, City Manager
MEETING DATE: January 26, 2011
ORIGINATING DEPT: City Manager’s Office
SUBJECT: Adopt (2nd Reading) Ordinance 412 related to film permits

BACKGROUND:
At the January 12, 2011 City Council meeting, the Council introduced Ordinance 412 related to film permits. This item is before Council as a second reading and adoption of Ordinance 412 which would add Chapter 11.10 to the Solana Beach Municipal Code as it relates to film permits.

DISCUSSION:
Staff recommends that the Council adopt Ordinance 412, to add Chapter 11.10 to the Solana Beach Municipal Code.

CEQA COMPLIANCE STATEMENT:
Not a project as defined by CEQA.

FISCAL IMPACT:
Permit applicants will be required to submit a $50.00 fee as with any Special Events Permit application. The initial fee will be reevaluated after a fee study is conducted as to the actual costs associated with the processing and review of film permit applications by the City. In addition, applicants will be required to pay for the rental of City property and to reimburse the City for actual personnel costs incurred during the filming or photographing during the shoot.

WORKPLAN: N/A

OPTIONS:
• Approve Staff recommendation
• Provide alternate direction.

CITY COUNCIL ACTION:

AGENDA ITEM C.4.
DEPARTMENT RECOMMENDATION:
Staff recommends that the City Council:

1. Adopt Ordinance 412 adding Solana Beach Municipal Code Chapter 11.10 as it relates to film permits.

CITY MANAGER'S RECOMMENDATION:
Approve Department Recommendation.

David Ot, City Manager

Attachment(s):
1. Ordinance 412
ORDINANCE 412

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SOLANA BEACH, CALIFORNIA, ADDING CHAPTER
11.10 OF THE SOLANA BEACH MUNICIPAL CODE, ALL
RELATED TO FILM PERMITS

WHEREAS, City Staff has been receiving requests for permission from motion
picture and photography studios to film or photograph subjects within the City; and

WHEREAS, filming and photographing activities for commercial purposes may
interfere with public health and safety, endanger property, or interrupt business or the
community; and

WHEREAS, Solana Beach Municipal Code does not provide for permits for
filming or photographing for commercial purposes within the City; and

WHEREAS, the City Council desires to add Chapter 11.10 to provide for
permitting of commercial filming or photographing within the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SOLANA BEACH
DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 11.10 of the Solana Beach Municipal Code is hereby added
and named, "FILM PERMITS."

Section 2. Section 11.10.010 of the Solana Beach Municipal Code is hereby
added as follows:

11.10.010 Purpose.

A valid Film Permit is required for photographing, filming, videotaping, or in any
manner visually recording subjects, locations, and/or events within the City of Solana
Beach for commercial purposes, whether on public or private property. It is the policy of
the City of Solana Beach to permit such activities so long as the use of locations within
the City does not unreasonably interfere with the public health and safety, unreasonably
endanger any property, or unreasonably interrupt business or the community. This
chapter shall provide for rules and regulations governing the issuance of permits for
filming within the City in order to balance the needs of those wishing to film with the
considerations of the public health and safety and the protection of public and private
property.

Section 3. Section 11.10.020 of the Solana Beach Municipal Code is hereby
added as follows:
11.10.020 Definitions.

A. "Charitable purposes" shall mean filming, videotaping, or photographing for any nonprofit organization which qualifies under Section 170 of the Internal Revenue Code of 1954 as a charitable organization provided that no individual either directly or indirectly receives a profit from the production, marketing or showing of the films or tapes.

B. "City property" shall mean any property owned or legally controlled by the City of Solana Beach, including but not limited to all city-owned or operated buildings, parks, beaches, public streets, sidewalks, trails, rights of way, open space, etc.

C. "Commercial use" shall mean filming or videotaping that is done for compensation, with the expectation of compensation, for advertising, or for any non-personal use not otherwise exempted by the provisions of this Chapter.

D. "Filming" shall mean any type of visual recording process regardless of the technology employed.

E. "News purposes" as specified in this chapter shall mean filming, videotaping, or photographing for television news broadcasting by reporters, photographers or cameramen in the employ of a newspaper, new service or similar entity, of news events concerning those persons, scenes or occurrences which are in the news and of general public interest.

F. "Studios" shall mean an established or fixed place of business where filming, videotaping, or photographing for motion picture, television production, or commercial production is regularly conducted upon the premises.

Section 4. Section 11.10.030 of the Solana Beach Municipal Code is hereby added as follows:

11.10.030 Permit Required.

Except as otherwise provided in Section 11.10.035, it shall be unlawful for any person to engage in the business or activity of photographic filming, videotaping, or producing motion pictures on motion picture film or electronic video tape for public exhibition as motion pictures or for television, at any place within the City, other than at or in an established motion picture, television, or photography studio, without a permit from the City Manager or his designee.

Section 5. Section 11.10.035 of the Solana Beach Municipal Code is hereby added as follows:

11.10.035 Exemptions.
The provisions of this chapter shall not apply to:

A. The filming, videotaping, or photographing solely for personal, private or family use;

B. The filming, videotaping, or photographing for use in a criminal investigation or civil proceeding; or

C. The filming, videotaping, or photographing for news purposes.

Section 6. Section 11.10.040 of the Solana Beach Municipal Code is hereby added as follows:

11.10.040 Business Certificate.

All persons or organizations applying for a Film Permit under this Chapter for commercial purposes shall also be required to obtain a business certificate under Chapter 4.02 of this Code. Applicants seeking a Film Permit for charitable purposes or by students shall not be required to obtain a business certificate.

Section 7. Section 11.10.050 of the Solana Beach Municipal Code is hereby added as follows:

11.10.050 Filing Fee and Permit Fee Schedule.

A. Except for those persons or entities who are exempt from the film permit fee as set forth herein, each film permit application shall be accompanied by a nonrefundable application and investigation fee in the amount established by the City Council by resolution to reflect the City’s reasonable costs in issuing the permit.

B. At the beginning of each fiscal year, the City Manager shall prepare a film permit fee schedule, to be approved by the City Council by resolution, which sets forth the daily charges for all City services required to be utilized in connection with any filming, videotaping or photographing, and which reflects the City’s reasonable costs related to these services.

Section 8. Section 11.10.055 of the Solana Beach Municipal Code is hereby added as follows:

11.10.055 Cost of police, fire and city departments.

A. If the City Manager determines that any potential danger of health, safety or property would be eliminated by the presence of police, fire protection, or other City personnel at the site of the filming or videotaping, the City Manager may grant the permit written upon condition that the permittee reimburse the City the costs of such police, fire protection, or City personnel as may be required.
B. If the permittee desires to remove, change or use City property, the permittee must obtain permission from the City Manager and reimburse to the City any costs incurred as a result of returning the public site(s) to its original state or better. If restoration work is performed by the permittee, as directed by the City, said work is subject to inspection and acceptance by the City Manager or appointee of same.

C. The City costs that the City Manager may include with the permit fee as referenced in Section 11.10.050, include but are not limited to: rental of City facilities, use of a City park or beach, use of a sidewalk, use of a street, rental of no parking signs, rental of parking spots, and administrative costs or site preparation by City staff.

Section 9. Section 11.10.060 of the Solana Beach Municipal Code is hereby added as follows:

11.10.060 No Fee Required.

Except for extraordinary circumstances as determined by the City Manager, the following filming activities shall be exempt from the permit fee requirements but shall be required to provide liability insurance, hold harmless and indemnification agreement as required by the City Manager:

A. Any filming activity that is conducted for charitable purposes; or,

B. Any filming activity that is conducted by any student of a recognized public or private elementary, secondary, college or trade institution, and that is conducted for purposes of a class or other school requirement.

C. For purposes of this Section, "extraordinary circumstances" shall be deemed to exist where it is determined by the City Manager that the number of persons involved in the filming, the location and equipment used, or any combination thereof will unreasonably interfere with the public health and safety, or unreasonably endanger any property.

Section 10. Section 11.10.070 of the Solana Beach Municipal Code is hereby added as follows:

11.10.070 Application form.

The City Manager shall furnish the application for the film permit. Such forms shall request at a minimum the following information:

A. Full legal name of the applicant;
B. Business name of the applicant (if different);
C. Business address and telephone of the applicant;
D. Copy of insurance certificate;
E. Location(s) of proposed filming or taping;
F. Date(s) and time(s) of proposed filming or taping;
G. Services of city employees desired or required on location during filming;
H. Description of the scene(s) to be filmed or taped;
I. Name of person in charge on location;
J. Such other information as the City Manager may deem necessary or desirable;
K. Proof of financial responsibility;
L. Hold harmless and indemnification agreement

Section 11. Section 11.10.080 of the Solana Beach Municipal Code is hereby added as follows:

11.10.080 Time for filing application.

Applications shall be presented to the City Manager at least thirty (30) business days in advance of the time that the proposed filming, videotaping or photographing is to commence. The applicant shall file an application for permit at least forty-five (45) days prior to filming for a permit requiring road closures or traffic control.

Section 12. Section 11.10.090 of the Solana Beach Municipal Code is hereby added as follows:

11.10.090 Determination by City Manager.

A. Before granting any permit pursuant to this chapter, the City Manager or his designee shall first determine that such photographing, filming, or videotaping will not unreasonably interfere with the public health and safety or unreasonably endanger any property. The City Manager shall retain the authority to restrict or prohibit production on certain holidays or during public events on public property. In making this determination, the City Manager shall take into consideration the location of the filming, duration and frequency of the filming, the presence or absence of adequate parking, noise, traffic hazards and conditions, fire hazards, dangerous activities or materials to be used during filming, encroachment onto City property, and other health and safety problems that are likely to be caused by such activities.

B. The issuance or denial of any permit by the City Manager shall be final unless appealed to the City Council within 10 days from the date of service of written notice of the decision of the City Manager. Failure to file an appeal within such 10-day period shall constitute a waiver of the right to such appeal. Appeals shall be filed with the city clerk and shall be accompanied by a nonrefundable fee of $50.00. Appeals shall be governed by Chapter 4.04 of the Solana Beach Municipal Code.

Section 13. Section 11.10.100 of the Solana Beach Municipal Code is hereby added as follows:

11.10.100 Conduct During Filming.
At all times during any filming activity for which the permittee has received a film permit as provided under this Chapter, the permittee shall abide by any and all directions, commands, warnings, and admonishments given by duly authorized police, fire, or City personnel. In the event any police, fire, or City personnel who are present during the filming determine that the filming is being conducted in such a manner as to unreasonably interfere with or endanger public or private property, or the public health and/or safety, such police or fire personnel are authorized to order the immediate revocation of the film permit and the immediate cessation of such filming. If the filming activity is stopped by order of any police, fire or City personnel, the permittee shall not be entitled to a refund for any sums paid in conjunction with the film permit.

Section 14. Section 11.10.110 of the Solana Beach Municipal Code is hereby added as follows:

11.10.110 Deposit and Insurance.

A. Prior to the issuance of a permit, the City Manager shall require the following:

1. When necessary, an agreement to compensate the City for loss and damage to public property, a cash deposit in an amount sufficient to guarantee the cleaning up of the site and removal of any debris left as a result of the filming activity. If the applicant is to provide security, traffic control or similar activities, a cash deposit in an amount sufficient to guarantee such performance shall be required;

2. As a condition of the issuance and continued validity of any permit granted pursuant to this Chapter, the permittee must first obtain, pay for and maintain a policy of general liability insurance which shall insure the City, its officers and employees against any liability, or claims of liability, brought or made by or on behalf of any person for personal injury or property damage caused by or arising out of any negligent act or omission of either the permittee, his agents or employees, including any officers or employees of the City, or caused by or arising out of the condition of any City property, whether real or personal, and occurring during the period and as a result of the activities for which such permit was issued. The amount of coverage to be provided for the public liability insurance and property damage insurance, including products liability coverage, shall be in minimum limits of $1,000,000;

3. All insurance companies affording coverage for the filming activity shall be required to add the City as “additional insured” under their insurance policy. A copy of the policy endorsement shall be provided to the City. The endorsement shall name the City, its officers, officials, employees and volunteers as additional insured. A certificate of insurance, providing evidence of coverages in compliance with this chapter shall be supplied to the City prior to the filming activity taking place. This additional insured endorsement shall provide that the insurance shall not be cancelled, or materially reduced in coverage or limits.
except after thirty (30) days written notice has been given to the City Clerk, City of Solana Beach, 635 S. HWY 101, Solana Beach, CA 92075.

4. All insurance companies affording coverage for the filming activity shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California and have at a minimum an AVII rating;

5. Maintenance of insurance by the applicant as specified shall in no way be interpreted as relieving the applicant of any responsibility whatsoever and, at their own expense, applicant may purchase such additional insurance, as they deem necessary;

B. Recommendations for the withholding of a surety bond or cash deposit for failure to perform as required shall be made to the City Manager no more than 15 days after the conclusion of the filming activity.

C. The City Manager shall submit the final refund or additional billing request to the finance department no more than 30 days after the conclusion of the filming activity.

D. The finance director shall forward to the applicant an accounting of City-incurred expenses with explanation if the City uses deposited funds, or submits additional billing requests.

Section 15. Section 11.10.120 of the Solana Beach Municipal Code is hereby added as follows:

11.10.120 Hold harmless.

The permittee agrees to indemnify and hold harmless the City of Solana Beach against and from any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature of or by anyone whomsoever in any way resulting from or arising out of the negligent or intentional acts, errors or omissions of the permittee or any of its officers, agents, or employees.

Section 16. Section 11.10.130 of the Solana Beach Municipal Code is hereby added as follows:

11.10.130 Penalty for violation.

Any person violating any provision of this chapter or conditions of a permit issued pursuant to this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment. In the
alternative, the city may issue an administrative citation pursuant to Chapter 1.18 SBMC or violators may be subject to any other penalty authorized by law.

Section 17. The City Council of the City of Solana Beach hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared invalid.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Solana Beach, California, on the 12th day of January 2011; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the 26th day of January, 2011, by the following vote:

AYES:  Councilmembers –
NOES:  Councilmembers –
ABSTAIN:  Councilmembers –
ABSENT:  Councilmembers –

LESA HEEBNER, Mayor

APPROVED AS TO FORM:  ATTEST:

JOHANNA N. CANLAS, City Attorney  ANGELA IVEY, City Clerk