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**MEMORANDUM**

**TO:** Mayor Anthony and Council, City of West Lake Hills  
**FROM:** Laura Mueller, Assistant City Attorney; Erin Higginbotham, Assistant City Attorney  
**DATE:** June 21, 2017  
**RE:** Commercial Filming Complaints and Existing Code Provisions

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Commercial filming on private residential property brings with it a host of potential problems for neighbors, including noise, light trespass, parking problems, and other nuisances. The following identifies existing City Code provisions where this type of conduct would constitute a violation. The primary issue is that commercial filming is not a residential use and so cannot be done on residential lots without a home occupation permit.

**Residential Use**

**Current City Ordinance Regulation of Commercial Filming**

Currently, commercial filming in residential areas is not authorized under the City's zoning code. Section 38.03.061 of the West Lake Hills Code of Ordinances states that: "[a]ll uses not expressly permitted or authorized by this chapter are prohibited in the city. . ." Residential use is the primary use zoned within the city and is where complaints arising from commercial filming originated. Residential use in the City is defined as:

One-family dwelling, limited to no more than one such building per lot occupied by no more than one family.<sup>1</sup>

Commercial filming is not specifically included in the list of authorized residential uses.<sup>2</sup> Home occupations are allowed as a special use in a residential district, but strict regulations indicate that any type of home occupation must take place entirely within the home (or accessory building) and so any outdoor commercial filming would not be allowed. Examples of regulations include:

- Home occupations shall not be detectable at any lot line;
- Home occupations shall not change the residential character of the lot and dwelling, nor alter the exterior appearance of the principal building from that of a dwelling for human habitation, nor require the installation of machinery or equipment other than that customary to domestic, hobby, standard office, or ordinary household activities;
- Home occupations shall be carried on entirely within a dwelling unit or within only one accessory building;

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<sup>1</sup> Sec 38.03.032.

<sup>2</sup> Sec. 38.03.032(b) & (c).

- The business shall be operated by a permanent full-time resident (or residents) of the dwelling unit, and no other persons.
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Based on these regulations, it is the external effects of commercial filming that would be an activity that could be a violation of the residential nature of the City. Indoor commercial filming that does not violate the above, or other requirements, would be allowed so long as the individual obtained a home occupation permit.

### **Noise Violations**

#### On-Site Violators (Section 12.02.001 – Noise Nuisance)

Article 12.02 of the City Code regulates noise. The Code declares the following a prohibited nuisance:

- (a) any unreasonable loud, disturbing, unnecessary noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity;
- (b) any noise of such character, intensity and continued duration, which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities.

Additionally, the Code lists examples of acts that would be considered violations of this article, including:

- (1) The playing of any radio, phonograph or other musical instrument in such manner or with such volume, particularly during the hours between 10 p.m. and 7 a.m. as to annoy or disturb the quiet, comfort or repose of persons of ordinary sensibilities in any dwelling, hotel or other type of residence.
- (2) The use of any stationary loud-speaker or amplifier of such intensity that annoys and disturbs persons of ordinary sensibilities in the immediate vicinity thereof; the use of any stationary loud-speaker or amplifier operated on any weekday between the hours of 10:30 p.m. and 7:00 a.m. or at any time on Sunday.

Any individuals who are causing unreasonable noise on residential property can be cited for violating Section 12.02.003.

#### Homeowners as Violators<sup>3</sup> (Noise Nuisance)

If a film crew is causing a noise nuisance when the owners of the premises are not on-site during the violation, in addition, or in lieu of, citing the film crew, the City Code creates a path for prosecuting homeowners for these noise violations.

Chapter 38 of the City Code regulates zoning. Section 38.03.061 notes that all land uses not expressly permitted or authorized are prohibited and includes a non-exhaustive list of prohibited activities. Included in this list is “[u]ses attended by substantial nuisance factors.” The term

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<sup>3</sup> Sec. 38.03.061(24)

“nuisance factor” is defined to include any offensive or unpleasant thing which annoys or disturbs a person of ordinary sensibility in the free use, possession, or enjoyment of his property or which endangers one’s health, life, or property, such as noise.<sup>4</sup>

Accordingly, using the property in a manner that creates a noise nuisance is considered a prohibited land use and a violation of the City’s zoning ordinance Section 38.03.061(24). Section 38.05.064 of the Zoning Chapter states that “[a]ny person who violates any provision of this chapter or any order made under the authority of this chapter, or who causes or permits any such violation . . . shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$2,000.00.

Therefore, if a homeowner is permitting their home to be used by others in a manner that creates a noise nuisances the Code allows them to also be cited for violating section 38.03.061(24).

### **Lighting Violations**

The City has a detailed outdoor lighting ordinance. Generally, it is a violation, punishable by up to \$500 per violation for any person to “person to erect, install, construct, enlarge, alter, repair, move, improve or convert any outdoor lighting of any type, or cause the same to be done, contrary to or in violation of any provision of [the lighting ordinance].”

If outdoor lighting is used in commercial filming it is unlikely it would be in compliance with the requirements of the city ordinance. In addition to setting lumen limits and regulating where outdoor lighting can be located, the lighting ordinance does not permit street lighting, search lights, uplighting, or any kind of “light trespass,” which includes any light that is visible from any other property other than the one where the light is installed. Additionally, outdoor lighting requires a permit and failure to get a permit is prima facie evidence that the lighting is a public nuisance.

If a residential property is used for commercial filming and any outdoor lighting is used without a permit not only can the onsite violators responsible for erecting the lights be cited for a violation of the lighting ordinance, but the homeowners can also be cited for allowing the improper lighting to be installed and thereby causing the violation.

### **Parking Violations**

Commercial filming would likely involve many people and vehicles. Division 3 of Article 16.05 contains strict parking regulations, including a list of streets where parking is prohibited. Any occupied or unoccupied vehicle blocking a public or private driveway is a violation of City Code. As is any vehicle that is parked on a public street for more than eight hours or parked in a way that obstructs both lanes of travel. Registered owners of vehicles in violation may be cited and, if the problem persists, the vehicles may be removed. A film crew, dependent on the size and extent, could be in violation of this ordinance.

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<sup>4</sup> Sec. 1.01.003.

### **Littering Violations**

It is possible that a commercial film crew using a residential property may produce excessive waste. Division 3 of Article 18.05 regulates littering in the City. Section 18.05.062 makes it unlawful for “any person to throw, discard, place or deposit litter in any manner or amount on any public or private property within the corporate limits of the city, except in containers lawfully provided therefor.” Additionally, the Code creates a duty of every home owner, agent, occupant or lessee to keep exterior private property free of litter.<sup>5</sup> If litter becomes a problem because of commercial filming on residential property, the film crew as well as the homeowners could be cited for violations of Article 18.05.

### **Solid Waste Violations**

Similar to the littering problem, commercial filming may create an excess of solid waste beyond what is considered “normal” that is not being disposed of properly. Section 18.05.066 creates regulations for household solid waste containerization and removal. This section outlines how normal household waste should be contained and disposed of. The Code specifically prohibits:

- Not bundling and tying securely excess loose materials, which normally fit into containers, so as to repel animals and to prevent materials from blowing or scattering.
- Not keeping containers covered at all times.
- Not taking the necessary precautions so that the contents of containers do not become litter.

If disposal of solid waste becomes an issue the homeowner or resident can be cited for a violation. The Code however limits the enforcement of this section to the City Inspector.<sup>6</sup> Accordingly, all complaints regarding a property’s disposal of solid waste must be forwarded to the City Inspector.

### **Conclusion and Recommendations**

Some residents have indicated concerns related to commercial filming, including noise and crowded streets, but all of these issues are already addressed by current ordinance. If a non-residential use, such as commercial filming, is happening on a residential lot, the simplest approach is to enforce the residential use regulations that prohibit commercial use of property without a home occupation permit. This approach would apply to any commercial use, not just filming. Enforcing the residential use requirement would potentially end commercial filming on a residential lot before it became a nuisance. However, any use of property that becomes a nuisance, including commercial filming, could be addressed by enforcing the City’s current nuisance regulations and notifying potential filming crews, if asked, of the City’s nuisance and zoning ordinances.

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<sup>5</sup> Sec. 18.05.069.

<sup>6</sup> Sec. 18.05.092.