eThekwini, South Africa

Film By-law, 2018

Legislation as at 6 September 2018

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eThekwini
South Africa

Film By-law, 2018

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Commenced on 6 March 2019

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To facilitate and regulate filming within the eThekwini municipal area, to provide for the issuing of a film permit; to provide for filming in environmental sensitive areas; to provide for the use of municipal services during filming; to provide for the duties of film permit holder, location manager or nominated official; to provide for prohibitions, offences and penalties and to provide for matters incidental thereto.

WHEREAS the Municipality has executive authority in respect of, and has the right to administer the local government matters listed in Parts B of Schedule 4 and 5 relating to local tourism, local amenities, public places and control of public nuisances;

WHEREAS the Municipality recognises the role that filming plays in the economy of eThekwini;

WHEREAS the Municipality adopts a developmental approach to filming within a well-managed municipal area, consideration must also be given to–

(a) the promotion of social and economic development;

(b) the promotion of a safe and healthy environment;

(c) municipal planning;

(d) learning and development of human capital; and

(e) the management of public places and public roads;

WHEREAS the Municipality recognises the need to promote the establishment of eThekwini Municipality as a dynamic, creative, innovative cost-effective production centre for all forms of entertainment media products, where the film and media sector contributes significantly to the economy and to the international profile of eThekwini Municipality and all its citizens;

WHEREAS the Municipality is committed to facilitating the processing of applications for permission to carry out filming in its area of jurisdiction, and to ensure that such facilitation occurs through the Durban Film Office, a division of the Economic Development Investment Promotion Unit within the eThekwini Municipality's Sustainable Development and City Enterprise Cluster;

WHEREAS the Municipality recognises the need to build co-operation and partnerships between key local and international players and establish linkages and synergies with provincial and national programmes;

AND WHEREAS the Municipality intends to continue providing a facility, through the Durban Film Office, for the processing of applications for filming, while continuing to act within the constraints of the Constitution and existing legislation;

NOW THEREFORE the Municipal Council of eThekwini Metropolitan Municipality, acting in terms of section 156 read with Schedules 4 Part B and 5 Part B of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

1. Definitions

In this By-law, unless the context indicates otherwise–

"**authorised official**" means a person authorised to implement the provisions of this By-law, including but not limited to#

(a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) municipal or metropolitan police officer as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers of the municipality as are specifically authorised by the municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"**child**" means any person under the age of 18 years and "children" has a corresponding meaning;

"**child performer**" means a child under the age of 18 years employed or contracted as an actor or performer in a motion picture or live theatrical production, or in a radio or television production or similar production for commercial media;

"**coastal area**" means the land that constitutes the coastal zone of a coastal municipality;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**DMOSS**" means Durban Metropolitan Open Space System, a system of open spaces incorporating areas of high biodiversity value (private and public owned) composed of a variety of habitat types linked together in an ecologically viable network;

"**Durban Film Office**" means the office within eThekwini Municipality falling part of the Economic Development Cluster and responsible for matters regarding films and filmmaking including the granting of filming permits and "Film Office" has a corresponding meaning;

"**environmental impact assessment**" means a systematic process of identifying, assessing and reporting environmental impacts associated with a proposed development activity;

"**environmental management programme**" means a practical programme that provides a description of the methods and procedures for mitigating and monitoring impacts, as well as containing environmental objectives and targets needed to reduce or eliminate negative environmental impacts;

"**environmental sensitive areas**" means land and water areas containing natural features or ecological functions, and structures, building and landscapes of such significance as to warrant their protection in the best long-term interest of the people and environment of eThekwini Municipality, and includes: -

(a) Open space areas within DMOSS, identified as having significant biodiversity value;

(b) Wetlands;

(c) Rivers and Riparian Areas;

(d) Floodplains;

(e) Estuaries;

(f) Coastal Dune System, Rocky Shores and Intertidal Zones;

(g) Municipal Conversation Areas; and

(h) Sites of historical and cultural significance and value to eThekwini Municipality;

"**filming**" means the recording of moving or still images, whether on film or video tape, digitally or by any other means, and all film-related activities attendant thereto but excludes –

(a) the video recording of a wedding ceremony or other private celebrations or event for the purposes of making a video record thereof for its participants;

(b) street interviews, press conferences or the recording of current affairs or news for immediate release including reporters, photographers or cameramen in the employ of a newspaper, news service, or similar entity engaged in on-the-spot print media, publishing or broadcasting, of news events concerning those persons, scenes or occurrences which are in the news and of general public interest;

(c) family videos;

(d) studio filming; and

(e) filming activities, whether motion or still photography, conducted on private property, facilities or buildings, including open spaces where dedicated parking or government services are not required,

and "film production assignment" has the corresponding meaning;

"**film-related activities**" means all activities attendant to filming, including but not limited to–

(a) interruption of traffic on public roads, public parking or pedestrians on sidewalks for the purpose of carrying out a film production assignment;

(b) the running of wires or cables across or over sidewalks or public roads for the purpose of carrying out a film production assignment;

(c) activities that are conducted on beaches, beach or launch sites, coastal areas, public launch sites, vehicle launch sites or stadiums for the purpose of carrying out a film production assignment;

(d) the use of generators, tripods or camera dollies on sidewalks, public roads or public parking for the purpose of carrying out a film production assignment;

(e) activities that have an impact on public parking and public open spaces and environmentally protected areas for the purpose of carrying out a film production assignment;

(f) filming activities that will generate noise and air pollution;

(g) use of animals on set for the purpose of carrying out a film production assignment;

(h) filming activities that will impact on a municipal property; and

(i) any other activity that may be determined by the Municipality as being undertaken for the purpose of carrying out a film production assignment;

"**film permit**" means a permit issued in terms of section 5 of this By-law;

"**location code of conduct**" means a set of regulatory guidelines that are considered binding and applicable on any person who is a member of the film production assignment taking place in a specified location within the eThekwini Municipality;

"**location manager**" means a member of the film crew responsible for–

(a) finding and securing locations to be used;

(b) obtaining all needed fire, police and other governmental permits; and

(c) coordinating the logistics involved for the production to successfully complete its necessary work,

and is also the face of the production to the community and responsible for addressing the issues that may arise due to the production's impact on the community;

"**municipal council**" or "council" means the eThekwini municipal council, a municipal council referred to in section 157(1) of the Constitution;

"**municipal property**" means property owned by, leased by or under the control of the Municipality;

"**Municipality**" means eThekwini Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution of the Republic of South Africa;

"**notification letter**" means a letter issued by the permit holder or production company to residents or businesses in an area where filming is going to take place informing them about the intended film production assignment and "concurrence letter" has a corresponding meaning;

"**permit holder**" means a person who has been issued with a film permit in terms of this By-law;

"**person**" means a natural or juristic person, and includes an organ of state;

"**production company**" means a company that provides a physical basis for works in the various categories such as film, television, radio, performing arts and new media art;

"**public place**" means any square, park, recreation ground, sportsground, sanitary lane or open space which has–

(a) in connection with any subdivision or layout of land into erven, been provided, reserved or set apart for the use by the public, or the owners or occupiers of such erven, whether or not it is shown on a general plan, plan of subdivision or diagram;

(b) at any time been dedicated to the public;

(c) been used by the public without interruption for a period of at least 30 years; or

(d) at any time been declared or rendered as such by the Municipality or other competent authority;

"**special effects**" means an illusion created for films and television by props, camerawork or computer graphics;

"**stunt**" means an unusual and difficult physical feat or an act requiring a special skill performed for artistic purposes usually on television, theatre, cinema or film; and

"**unusual requests**" means permit application requesting permission to conduct out of the ordinary filming activities that will require extended consultation with government departments, communities and regulatory guidelines.

2. Interpretation of the By-law

If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

3. Application of By-law

(1) This By-law applies to all filming which occurs within the jurisdiction of the eThekwini Municipality.

(2) If filming or film-related activities by a production company takes place in an area that forms part of Ingonyama Trust Board, the production company must notify the Chief of the area and seek his or her approval.

(3) The approval contemplated in terms of sub-section (2), must be communicated to the Durban Film Office three days before such filming takes place.

4. Control of filming

(1) No person may carry out or undertake any filming on municipal property or in a public place–

(a) without a valid film permit issued by the Durban Film Office on behalf of the Municipality;

(b) otherwise than in accordance with any applicable legislation; and

(c) unless he or she acts in accordance with any terms and conditions, as may be determined by the Municipality subject to subsection (2).

(2) The provisions of subsection (1) also apply to film-related activity on municipal property or in a public place where the actual recording of the film takes place on land other than municipal property or a public place.

(3) The Municipality may exercise its rights to access or intervene in a film production assignment if there is an emergency.

5. Application for filming

(1) Any person who intends to conduct filming within the eThekwini Municipality must submit an application to the Durban Film Office.

(2) The application for a film shoot must include, but is not limited to, the submission of the following documents:

(a) film permit application form;

(b) public liability insurance;

(c) signed copy of the location code of conduct;

(d) indemnity form;

(e) notification letter

(f) proof of payment of a fee referred hereto in subsection (3) if applicable; and

(g) any other document or information that may be requested by the Durban Film Office depending on the nature of the shoot.

(3) The Durban Film Office may request any person who intends to carry out or conduct filming on municipal property or in a public place, to pay a fee in order to carry out such filming within eThekwini Municipality.

(4) An application to conduct a film production assignment referred hereto in subsection (1) by any person, must be submitted to the authorised official in accordance with the timeframes detailed in Schedule A of this By-law.

(5) The production company shall be responsible for applying for approvals, authorisations, and permits that may be required in terms of all relevant–

(a) international treaties of which the state is a signatory;

(b) national legislation;

(c) provincial legislation; and

(d) municipal legislation.

(6) Upon receipt of an application for a permit, the Durban Film Office must issue written confirmation of acknowledgement of receipt of the application within 48 hours.

(7) The Durban Film Office must–

(a) request any person who intends to carry out or conduct a film production assignment to provide notification letters to businesses, occupants, residents, vendors or adjacent properties notifying them of the activity intended; and

(b) instruct such person to provide proof that the notification letters were served accordingly to all affected individuals and businesses.

(8) The notification letters as envisaged in subsection 7, must include–

(a) full particulars of the name, address, occupation and contact details of the permit holder;

(b) full particulars of the person who will be in charge of the filming, if such a person is not an applicant;

(c) full details of such locations where the filming is intended to be carried out, the proposed starting and finishing times and the number of persons, vehicles, implements or other apparatus that will be used; and

(d) general details of–

(i) the filming activities to be carried out;

(ii) roads or other municipal services that might be temporarily closed during the shoot; and

(iii) contacts of the Durban Film Office in case of any need to enquire about the film.

(9) All applications for filming may be approved by the Durban Film Office depending on the nature, the risk and size of the film as it may be determined in terms of the Schedule A.

(10) The Durban Film Office may modify the time period for assessment and response of an application for a film permit as set out in Schedule A of this By-law, where the nature of the application demands coordination of 'unusual' requests.

(11) The Durban Film Office must notify accordingly any person who has applied for a film permit if the times for assessment and response are modified in terms of subsection 10.

(12) The Durban Film Office must consider any application for filming and may-

(a) approve it subject to conditions;

(b) request that additional information be furnished within a specified time frame; or

(c) reject the application and provide reasons thereof.

6. Filming on roads

(1) Any person who intends to use National or Provincial roads that are situated within the Municipality for filming, must file such request with the Provincial Department of Transport as well as the South African National Roads Agency Limited for consideration, clearance and approval.

(2) Any application referred hereto in terms of subsection (1), after it has been approved by the said agencies, must be submitted to eThekwini Metropolitan Police Service where such approval by the said agencies may affect the flow of traffic within the municipality.

(3) An authorisation to film on a municipal road by any person, must be submitted to eThekwini Metropolitan Police Service and must include the following information:

(a) a proposed plan and diagram indicating the actions to be taken by the film company to minimize risks to motorists and traffic flow;

(b) the nature and extent of traffic management required;

(c) a clear identification on the impact on traffic flow;

(d) alternate traffic routes;

(e) the impact on residents;

(f) the impact on businesses; and

(g) the date and time that the filming is set to take place.

7. Children on set

(1) Any person who intends to employ a child performer on set must–

(a) comply with the Basic Conditions of Employment Act, 1997 (Act 75 of 1997); and

(b) obtain authorisation where applicable.

(2) Any person that has been granted permission by the National Department of Labour to use a child performer on set must–

(a) attach such permission with the application for filming; and

(b) produce as proof, the consent by either the parents of the child or the legal guardian.

8. Procedure for use of animals on set

(1) Any person who intends to use animals in a film shoot must comply with legislation regulating keeping and use of animals.

(2) The Municipality may consult the services of the local animal welfare organisations to assess proposed filming involving the use of animals when necessary.

9. Special effects

(1) The production company must inform the Durban Film Office of any special effects, stunts and fireworks that will be used during the film production assignment.

(2) A letter of permission issued by the South African Police Service to use guns, ammunition, explosives, flammable liquids, or incendiary devices must be submitted to the Durban Film Office by the production company on application for the permit.

(3) The permit holder must ensure that a warrant officer of the South African Police Service, Emergency Medical Rescue Services and an authorised official from the Fire Department, is on set where there is a use of special effects, stunts or guns.

(4) Any person who intends to use fireworks in a film shoot must obtain authorisation from the Chief Inspector of Explosives of the South African Police Service and comply with all the requirements as set out in terms of the Explosives Act, 1956 (Act No. 26 of 1956) and any by-law of the Municipality regulating the use of fireworks.

(5) Any person who intends to use remotely piloted aircrafts while filming for commercial outcome, interest or gain must register such aircraft with the South African Civil Aviation Authority and comply with part 101 of the South African Civil Aviation Regulations, 2011.

10. Filming in Environmental Sensitive Areas

(1) The Durban Film Office may require the production company to conduct an environmental impact assessment or compile and implement an Environment Management Programme if the Municipality deems the film shoot to have a potential adverse impact on the environment.

(2) This By-law does not absolve the production company from complying with any other applicable national or provincial environmental legislation.

(3) Any person who intends to conduct filming on adjacent or in close proximity to an environmental sensitive area may be required to –

(a) compile and implement an Environmental Management Programme, where such filming is a micro, small or medium shoot; or

(b) conduct an Environmental Impact Assessment, where such filming is a large or very large shoot.

(4) The Environmental Management Programme or Environmental Impact Assessment referred to in subsection (3), must be submitted to eThekwini Municipality: Environmental Planning and Climate Protection Department for approval.

(5) Where an environmental authorisation is required in terms of the National Environmental Management Act, 2007 (Act No. 7 of 2007), its Impact Assessment Regulations and listing notices or specific environmental management Acts, this may be submitted in lieu of the Environmental Impact Assessment or Environmental Management Programme in terms of this By-law.

(6) The Municipality may require compliance with any norm or standard for film shooting in environmentally sensitive areas.

(7) The Municipality may prohibit filming in certain conservation areas having significant and sensitive biodiversity attributes.

11. Use of municipal services

(1) The Durban Film Office or the production company may request the services of the Municipal departments on set including–

(a) Disaster Management;

(b) Health;

(c) Metropolitan Police Service;

(d) Fire;

(e) Cleansing and Solid Waste; or

(f) any other relevant department.

(2) The Durban Film Office may prescribe a fee, charge or tariff for the use of Municipal services as provided in terms of subsection (1) and such fee, charge or tariff will be payable by the production company.

12. Use of municipal property

Any person who intends to use municipal buildings and facilities for filming may do so in terms of the Municipality's by-law regulating the use of municipal premises and facilities.

13. Duty of permit holder, location manager or nominated authority

The permit holder, location manager or nominated authority must –

(a) be present on set at all times;

(b) produce the film permit on demand by the Durban Film Office or an authorised official;

(c) ensure that there is minimum disruption to businesses, residents and institutions during the film production assignment;

(d) ensure proper site security and safety;

(e) ensure that waste generated by the film production assignment is dealt with in accordance with the Municipality's by-law regulating waste removal;

(f) advise the Durban Film Office of the name, position, organisation, address, telephone number, fax number and e-mail address of the location manager should there be any change in this information as identified in the film permit;

(g) ensure that safety officers are on set and all relevant health and safety permits are available;

(h) ensure that the area has been left in a neat and tidy condition at the end of each shoot;

(i) advise if there are any changes or deviation in filming or conditions as per the approved permit; and

(j) ensure that all those involved in filming comply with the Municipality's By-laws at all times.

14. Insurance

(1) The production company must provide evidence to the satisfaction of the Municipality of appropriate–

(a) indemnity cover against third party liability claims; and

(b) specialised risk insurance *inter alia*, blanket liability or work cover, where stunts, special effects, pyrotechnics or any other activity which may put the public at risk is involved.

(2) The Municipality shall not be liable for damages or compensation arising from filming or film-related activities conducted by the production company or anything lawfully done in good faith by the Municipality or any authorised official thereof in terms of this By-law.

15. Prohibitions

(1) A permit holder must not do or permit to be done anything which may–

(a) constitute a nuisance;

(b) cause damage to any property;

(c) cause injury to the occupants of neighbouring or adjacent premises; or

(d) constitute a breach of any by-law, or other legislation or rules of any other competent authority including those pertaining to special events, parks, cemeteries, traffic, signs, parking and noise.

(2) A film permit is not transferable from one–

(a) person to another;

(b) event to another;

(c) date and time to another; or

(d) location to another,

without the written permission of the Municipality.

(3) Any film permit issued in terms of this By-law is only applicable for that film and will expire as prescribed on the permit issued.

16. Compliance notice

(1) The Durban Film Office may issue a compliance notice to any person who has contravened any provisions of this By-law or a condition of the permit.

(2) A compliance notice contemplated above must–

(a) identify the person to whom it is addressed to;

(b) indicate the provision of the relevant By-law that is being contravened or will be contravened if the condition is allowed to continue;

(c) indicate the steps the person must take and the period within which such steps must be taken to rectify the contravention; and

(d) direct the person's attention to the following:

(i) that the person could be prosecuted for and convicted of an offence;

(ii) that on conviction, the person will be liable for the penalties as provided for; and

(iii) that in addition to any fine which may be imposed, the Municipality may recover any costs it may have incurred in rectifying the contravention, as provided for under section 17.

(3) If the person, on whom a notice was served in terms of subsections (1), fails to comply with the requirements of the notice, the Municipality must—

(a) immediately stop the filming or cause such filming to cease;

(b) charge the permit holder, location manager or person in charge of filming in terms of section 19 of this By-law; and

(c) confiscate material used for filming in compliance with the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

17. Recovery of costs

(1) If a permit holder, location manager or nominated authority contravenes any provision of this By-law and fails or refuses to cease the contravention, or to take steps to rectify the contravention, the Durban Film Office may take those steps itself and recover the costs from the permit holder, location manager or nominated authority.

(2) The costs referred hereto in subsection (1) is in addition to any fine which may be imposed on the permit holder, location manager or nominated authority.

(3) The Durban Film Office acting in terms of subsection (1) is discretionary and dependant on–

(a) each case of non-compliance; and

(b) it having the necessary resources available to act under such circumstance:

Provided that subsection (1) does not create a positive duty on the Municipality to take steps to rectify every case of non-compliance.

18. Right of entry and inspection

(1) An authorised official of the Municipality may, for any purpose connected with the enforcement of this By-law, at all reasonable times and without prior notice enter any public or private place –

(a) where a film production assignment is being carried out; or

(b) if he or she has reasonable grounds to suspect that a film production assignment is being carried out,

in order to carry out such examination, inquiry or inspection as he or she may deem necessary.

19. Offences

(1) A person commits offence if he or she–

(a) contravenes any provisions of this By-law;

(b) terminates or allows the insurance to lapse or fails to notify the Municipality if such insurance is still in existence as required by section 14 of this By-law;

(c) provides the Municipality with false information;

(b) contravenes any conditions, restrictions or prohibitions imposed in terms of this By-law or the film permit;

(c) obstructs, hinders, or in any manner interferes with an authorised official who is acting or entitled to act in terms of this By-law; or

(d) fails to obey any lawful instruction or direction given to him or her in terms of this By-law.

20. Penalties

(1) Any person who is convicted of an offence under this By-law shall be liable to a fine of an amount not exceeding R100 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and imprisonment.

(2) In the case of a continuing offence, an additional fine of an amount not exceeding R500.00 or imprisonment for a period not exceeding 10 days, for each day on which such offence continues or both such fine and imprisonment, will be imposed.

21. Delegations

(1) Subject to the Constitution and applicable national and provincial laws, any–

(a) power, excluding a power referred to in section 160(2) of the Constitution;

(b) function; or

(c) duty,

conferred, in terms of this By-law, upon the Council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor, or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of sub-section (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the–

(a) entity or person issuing the delegation or sub-delegation;

(b) recipient of the delegation or sub-delegation; and

(c) conditions attached to the delegation or sub-delegation.

22. Appeals

(1) A person whose rights are affected by a decision taken by an authorised official in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) Where a conviction has been secured by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court’s appeal process.

23. Short title and commencement

This By-law is called the eThekwini Municipality: Film By-law, 2018 and takes effect six months from the date of the publication thereof or on such earlier date as may be determined by the publication of a commencement notice in the Provincial Gazette.

Schedule A

Time frames for permit application assessment and response

Type	Size	Minimum assessment and response timeframes
Micro shoot	8 or less cast and crew, 1-3 vehicles and no traffic intervention required	24 hours or less
Small shoot	9 – 15 cast and crew, 4-6 vehicles and no traffic intervention required	24 hours or less
Medium shoot	16 – 30 cast and crew, 11- 30 vehicles	48 hours
Large shoot	31 – 60 cast and crew, 16- 30 vehicles	48 hours
Very large shoot	More than 60 people, more than 31 vehicles	Longer than 48 hours