

**Local Government Act 1995**

**City of Joondalup**

**Fencing Local Law 2014**

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## **Local Government Act 1995**

### **City of Joondalup**

## **Fencing Local Law 2014**

Under the powers conferred on it by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Joondalup resolved on dd mm 2014 to make the *City of Joondalup Fencing Local Law 2014*.

### **Part 1 - Preliminary**

#### **1.1 Citation**

This local law may be cited as the *City of Joondalup Fencing Local Law 2014*.

#### **1.2 Commencement**

This local law commences on the 14<sup>th</sup> day after the day on which it is published in the *Government Gazette*.

#### **1.3 Purpose and effect**

- (1) The purpose of this local law is to determine the standard of a sufficient fence and the building standards of fences throughout the district.
- (2) The effect of this local law is to establish the minimum requirements for fencing within the district.

#### **1.4 Application**

This local law applies throughout the district.

#### **1.5 Repeal**

The following local laws are repealed:

- (1) The *City of Joondalup Private Property Local Law 1998* as published in the *Government Gazette* (No. 37) on 8 March 1999;
- (2) Clauses 5.2, 5.3, 5.5, 5.6 and 5.7 of the *City of Joondalup Amendment Local Law 2000* as published in the *Government Gazette* (No. 136) on 10 July 2000; and
- (3) Clause 7 of the *City of Joondalup Amendment Local Law 2001* as published in the *Government Gazette* (No. 7) on 15 January 2002.

#### **1.6 Definitions**

- (1) In this local law -

**Act** means the *Dividing Fences Act 1961*;

**AS** means an Australian Standard or Australian/New Zealand Standard published by Standards Australia;

**barbed wire fence** means a wire or strand of wires having small pieces of sharply pointed wire twisted around it at short intervals;

**boundary fence** means a fence, other than a dividing fence, that separates private land from land that is local government property or a public place;

**building permit** has the meaning given to it in the *Building Act 2011*;

**commercial lot** means a lot where a commercial use -

- (a) is or may be permitted under the district planning scheme; and
- (b) is or will be the predominant use of the lot;

**district** means the district of the local government;

**district planning scheme** means a local planning scheme of the local government made under the *Planning and Development Act 2005*;

**dividing fence** has the meaning given to it in the Act;

<p><b>dividing fence</b> means a fence that separates the lands of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary;</p>
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[Section 5 of the Act]

**electrified fence** means a fence carrying or designed to carry an electric charge;

**fence** means any structure, not including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

**height** in relation to a fence means the vertical distance between –

- (a) the top of the fence at any point; and
- (a) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point;

**industrial lot** means a lot where an industrial use -

- (a) is or may be permitted under the district planning scheme; and
- (b) is or will be the predominant use of the lot;

**local government** means the City of Joondalup;

**local government property** means anything except a thoroughfare –

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an ‘otherwise unvested facility’ within section 3.53 of the *Local Government Act 1995*;

**lot** has the meaning given to it in the *Planning and Development Act 2005*;

**lot** means a defined portion of land -

- (a) depicted on a plan or diagram available from, or deposited with, the Authority and for which a separate Crown grant or certificate of title has been or can be issued; or
- (b) depicted on a diagram or plan of survey of a subdivision approved by the Commission; or
- (c) which is the whole of the land the subject of —
  - (i) a Crown grant issued under the *Land Act 1933*;
  - (ii) a certificate of title registered under the *Transfer of Land Act 1893*;
  - (iii) a survey into a location or lot under section 27(2) of the *Land Administration Act 1997* or a certificate of Crown land title the subject of such a survey;
  - (iv) a part-lot shown on a diagram or plan of survey of a subdivision deposited with the Authority; or
  - (v) a conveyance registered under the *Registration of Deeds Act 1856*,

but does not include a lot in relation to a strata scheme, a lot in relation to a survey-strata scheme, or a lot shown as common property on a survey-strata plan, as those terms are defined in the *Strata Titles Act 1985*;

[Section 4 of the *Planning and Development Act 2005*]

**owner**, for the purposes of –

- (a) the definition of ‘dividing fence’, has the meaning given to it in the Act;

**owner** in relation to land, includes every person who —

- (a) jointly or severally, whether at law or in equity —
  - (i) is entitled to land for any estate of freehold in possession; or
  - (ii) is entitled to receive or is in receipt of or if the land were let to a tenant would be entitled to receive the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise; or
- (b) is the holder of a lease of land the unexpired term of which is not less than 5 years at the time —
  - (i) notice to fence is given by or to him pursuant to section 8;
  - (ii) he makes application to the court under section 11(1);
  - (iii) a copy of an order made pursuant to section 11(2) is given to him;
  - (iv) notice is given by or to him pursuant to section 15,

but does not include any trustees or other persons in whom land is vested as a public reserve, public park or for such other public purposes as may be prescribed, or a person who has the care, control and management of a public reserve, public park or land used for such other public purposes as may be prescribed.

[Section 5 of the *Dividing Fences Act 1961*]

**public place** includes a thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include –

- (a) premises on private property from which trading is lawfully conducted under a written law; and
- (b) local government property;

**razor wire fence** means a coiled strong wire with pieces of sharp cutting edges set across it at close intervals;

**residential lot** means a lot where a residential use -

- (a) is or may be permitted under the district planning scheme; and
- (b) is or will be the predominant use of the lot;

**retaining wall** means any structure which prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;

**rural lot** means a lot where a rural use -

- (a) is or may be permitted under the district planning scheme; and
- (b) is or will be the predominant use of the lot;

**Schedule** means a Schedule to this local law;

**street boundary** means the boundary between the land comprising a street and the land that abuts thereon;

**street setback** means the horizontal distance between the street boundary and a building, measured at right angles (90 degrees) to the street boundary;

**street setback area** means the area between the street boundary and the street setback;

**sufficient fence** means a fence described in clause 2.1;

**thoroughfare** has the meaning give to it in the *Local Government Act 1995*, but does not include a private thoroughfare which is not under the management or control of the local government.

**thoroughfare** means a road or other thoroughfare and includes structure or other things appurtenant to the thoroughfare that are within its limits, and nothing is prevented from being a thoroughfare only because it is not open at each end.

[section 1.4 of the *Local Government Act 1995*]

## **1.7 Relationship with other laws**

- (1) In the event of any inconsistency between the provisions of a district planning scheme and the provisions of this local law, the provisions of the district planning scheme are to prevail.
- (2) Nothing in this local law affects a provision in any other written law that requires a building permit for a fence.

## **Part 2 - Sufficient fences**

### **2.1 Meaning of 'sufficient fence'**

(1) For the purposes of the Act a dividing fence is a sufficient fence in a residential area if it is constructed on or near the boundary between –

(a) a residential lot and a:

- (i) residential lot;
- (ii) commercial lot;
- (iii) industrial lot;
- (iv) rural lot,

and is constructed and maintained in accordance with the specifications in Schedule 1.

(2) For the purposes of the Act a dividing fence is a sufficient fence in an industrial or commercial area if it is constructed on or near the boundary between –

(a) a commercial lot or an industrial lot and a:

- (i) commercial lot;
- (ii) industrial lot;
- (iii) rural lot,

and is constructed and maintained in accordance with the specifications in Schedule 2.

(3) For the purposes of the Act a dividing fence is a sufficient fence in a rural area if it is constructed on or near the boundary between two or more rural lots and is constructed and maintained in accordance with the specifications in Schedule 3.

## **Part 3 - Fencing requiring a building permit**

### **3.1 Fencing requiring a building permit**

Consistent with the provisions of the *Building Act 2011* and the *Building Regulations 2012* the following fences require a building permit –

- (a) any fence over 1.8 metres in height;
- (b) any fence containing masonry and exceeding 750 millimetres in height.

## **Part 4 - Fencing materials and requirements**

### **4.1 Prohibited fencing materials**

(1) In constructing a fence a person must not use:

- (a) broken glass or any other potentially harmful projections or material;
- (b) asbestos fibre;

- (c) material that is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;
  - (d) pre-used materials unless the material is painted or treated to the satisfaction of the local government.
- (2) A person shall not construct a masonry fence that is not constructed in accordance with AS3700 – Masonry Structures.

#### **4.2 Gates in boundary fences**

A person shall not install a gate in a boundary fence which does not –

- (a) open into the lot; or
- (b) open by sliding parallel on the inside of the fence, which it forms part of, when closed,

unless approved otherwise by the local government.

#### **4.3 Fencing materials requiring written approval**

- (1) A person shall not construct any barbed wire fence, electrified fence or razor wire fence without first obtaining the written approval of the local government.
- (2) Any barbed wire fence, electrified fence or razor wire fence shall be constructed in accordance with the conditions of written approval issued by the local government.

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**Schedule 1 - Specifications for a sufficient fence on a residential lot**

A sufficient fence is a fence constructed of corrugated fibre reinforced pressed cement and erected in accordance with manufacturer's specifications or which otherwise satisfies the following specifications -

- (i) a minimum in-ground depth of 25% of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600 millimetres;
- (ii) the total height and depth of the fence to consist of a single continuous fibre reinforced cement sheet;
- (iii) the sheets to be lapped and capped with extruded snap-fit type capping in accordance with the manufacturers written instructions; and
- (iv) the height of the fence to be 1.8 metres except with respect to a fence within the street setback area.

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**Schedule 2 - Specifications for a sufficient fence on a commercial lot or  
an industrial lot**

A sufficient fence is a chain link fabric fence erected in accordance with *AS1725.1-2010 Chain link fabric fencing* with the height of the fence to be 1.8 metres.

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**Schedule 3 - Specifications for a sufficient fence on a rural lot**

A sufficient fence is a fence of post and wire construction erected at a height of 1.2 metres and containing a minimum of 5 wires, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through and each wire connected to posts in all cases.

Dated dd of mm 2014.

The Common Seal of the City of Joondalup )  
was affixed by authority of a resolution )  
of the Council in the presence of: )

.....  
TROY PICKARD  
MAYOR

.....  
GARRY HUNT  
CHIEF EXECUTIVE OFFICER