

Local Government Act 1995

City of Joondalup

Fencing Local Law 2014

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Under the powers conferred on it by the *Local Government Act 1995*, the *Dividing Fences Act 1961* and under all other powers enabling it, the Council of the City of Joondalup resolved on 18 November 2014 to make the following local law.

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 14th 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 prescribe a sufficient fence and the standard for the construction 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The following local laws are repealed: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 published by Standards Australia, as amended from time to time;

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 thoroughfare;

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~~ local 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;

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~~ local planning scheme; and
- (b) is or will be the predominant use of the lot;

local government means the City of Joondalup;

local government property has the meaning given to it in the *Local Government Act 1995*;

local planning scheme means the local planning scheme, or each of the local planning schemes, made by the local government and in force from time to time under the *Planning and Development Act 2005*;

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

primary street means the sole or principal thoroughfare that provides access to the major entry (front door) to the dwelling;

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

Residential Design Codes means the *Residential Design Codes* prepared as a State planning policy under section 26(1) of the *Planning and Development Act 2005*;

residential lot means a lot where a residential use –

- (a) is or may be permitted under the ~~district~~ **local** 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 the primary 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 has the meaning given to it in the *Residential Design Codes*;

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

street setback area has the meaning given to it in the *Residential Design Codes*;

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.

1.7 Relationship with other laws

- (1) In the event of any inconsistency between the provisions of a ~~district~~ **local** planning scheme and the provisions of this local law, the provisions of the ~~district~~ **local** planning scheme are to prevail.
- (2) Nothing in this local law affects the need for compliance, in respect of a fence, with –
 - (a) any relevant provisions of a district planning scheme; and
 - (b) any relevant provisions that apply if a building permit is required for that fence under the *Building Act 2011* or *Building Regulations 2012*.

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 residential lot and a –
 - (a) residential lot;
 - (b) commercial lot;

(c) industrial lot;

~~(d) rural lot,~~

and is constructed and maintained to a minimum standard 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 commercial lot or an industrial lot and a –

(a) commercial lot;

(b) industrial lot;

~~(c) rural lot,~~

and is constructed and maintained to a minimum standard 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 to a minimum standard in accordance with the specifications in Schedule 3.~~

Part 3 - Fencing materials and requirements

3.1 Fences that do not require a building permit

Fences that do not require a building permit is dealt with in the *Building Regulations 2012*.

3.2 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.

3.3 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,

without first obtaining the written approval of the local government.

3.4 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.

3.5 Masonry fences

A person shall construct a masonry fence in accordance with *AS3700-2011 Masonry structures*.

Part 4 - Offences and penalties

4.1 Offences and penalties

- ~~(1) A person who fails to comply with or who contravenes any provision of this local law commits an offence and is liable on conviction to a maximum penalty of \$5,000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.~~

Part 4 - Approvals

4.1 Application for approval

- (1) Where a person is required to obtain the approval of the local government under this local law, that person shall apply for approval in accordance with subclause (2).
- (2) An application for approval under this local law shall -
- (a) be in the form determined by the local government;
 - (b) be signed by the applicant and the owner of the lot;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the local government together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for approval.
- (4) The local government may refuse to consider an application for approval which is not in accordance with subclauses (2) and (3).

4.2 Decision on application for approval

- (1) The local government may -
- (a) approve an application for approval unconditionally or subject to any conditions;
or
 - (b) refuse to approve an application for approval.
- (2) If the local government approves an application for approval, it is to issue to the applicant an approval in the form determined by the local government.
- (3) If the local government refuses to approve an application for approval, it is to give written notice of that refusal to the applicant.
- (4) Where a clause of this local law refers to conditions which may be imposed on an approval or which are to be taken to be imposed on an approval, the clause does not

limit the power of the local government to impose other conditions on the approval under subclause (1)(a).

4.3 Compliance with approval

Where an application for approval has been approved, the applicant and the owner or occupier of the lot to which the approval relates, shall comply with the terms and any conditions of that approval.

4.4 Duration of approval

Unless otherwise stated in the form of approval, an approval granted under this local law -

- (a) runs with the lot to which it relates;
- (b) may be relied upon by any subsequent occupier or owner of the lot; and
- (c) may be enforced by the local government against a subsequent occupier or owner of the lot.

Part 5 - Notices of Breach

5.1 Notices of breach

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner of that lot.
- (2) A notice of breach shall -
 - (a) specify the provision of this local law which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner is required to remedy the breach within the time specified in the notice.
- (3) Should an owner fail to comply with a notice of breach, the local government may, by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner of the lot in a court of competent jurisdiction.
- (4) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any entry on to land will be in accordance with Part 3, Division 3 of that Act.

Part 6 – Offences and penalties

6.1 Offences and penalties

- (1) A person who fails to comply with a notice of breach commits an offence and is liable upon conviction to a penalty of not less than \$250 and not exceeding \$5,000 and, if the offence is a continuing offence, to a maximum daily penalty of \$500.
- (2) A person who fails to comply with or who contravenes any provision of this local law commits an offence and is liable on conviction to a penalty of not less than \$250 and not exceeding \$5,000 and, if the offence is a continuing offence, to a maximum daily penalty of \$500.

6.2 Modified penalties

- (1) An offence against any provision of this local law is a prescribed offence for the purposes of section 9.16(1) of the *Local Government Act 1995*.
- (2) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is \$125.

6.3 Form of notices

For the purposes of this local law -

- (a) the form of the infringement notice referred to in sections 9.16 and 9.17 of the *Local Government Act 1995* is to be in the form of Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the withdrawal of infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

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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 and which satisfies the following specifications:

- (a) 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;
- (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement sheet;
- (c) the sheets to be lapped and capped with extruded snap-fit type capping in accordance with the manufacturers written instructions; and
- (d) the height of the fence to be 1.8 metres except with respect to a fence within the street setback area.

Schedule 1 - Specifications for a sufficient fence on residential lot

A "sufficient fence" on a residential lot is a fence constructed of corrugated fibre reinforced pressed cement or steel sheeting constructed to manufacturer's specifications or which otherwise satisfies the following specifications -

- (1) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;
- (2) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
- (3) the sheets to be lapped and capped with extruded "snap-fit" type capping in accordance with the manufacturers written instructions; and
- (4) the height of the fence to be 1800mm from natural ground level except with respect to a fence within a street setback area which is subject to the relevant provisions of the Residential Design Codes.

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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 17 of December 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