

LOCAL GOVERNMENT ACT 1995



CITY OF JOONDALUP

FENCING AMENDMENT LOCAL LAW 2021

Gazetted (No. 45) – 29 March 2022

Local Government Act 1995

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Fencing Amendment Local Law 2021

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Local Government Act 1995

City of Joondalup

Fencing Amendment Local Law 2021

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Joondalup resolved on 15 February 2022 to make the following local law.

Part 1 - Preliminary

1.1 Citation

This local law may be cited as the *City of Joondalup Fencing Amendment Local Law 2021*.

1.2 Commencement

This local law commences 14 days 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 amend the *City of Joondalup Fencing Local Law 2014*.
- (2) The effect of this local law is to better clarify the sufficient fence provisions and other requirements within *City of Joondalup Fencing Local Law 2014* and to ensure information is current with prevailing legislation.

Part 2 - Amendments

2.1 City of Joondalup Fencing Local Law 2014 amended

This Part of the local law amends the *City of Joondalup Fencing Local Law 2014* as published in the *Government Gazette* on 14 January 2015.

2.2 Clause 1.6 amended

In clause 1.6:

- (a) amend the definition **commercial lot** by replacing “district” with “local”
- (b) delete the definition **district planning scheme** and insert in alphabetical order:

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*;
- (c) amend the definition **industrial lot** by replacing “district” with “local”
- (d) insert in alphabetical order:

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*;

- (e) amend the definition **residential lot** by replacing “district” with “local”
- (f) delete the definition **rural lot**
- (g) delete the definition for **street setback** and insert in alphabetical order:
street setback has the meaning given to it in the *Residential Design Codes*;
- (h) delete the definition **street setback area** and insert in alphabetical order:
street setback area has the meaning given to it in the *Residential Design Codes*;

2.3 Clause 1.7 amended

In clause 1.7 replace all instances of “district” with “local”.

2.4 Clause 2.1 amended

- (1) In clause 2.1(c) delete “,” and insert “;”.
- (2) Delete clause 2.1(1)(d).
- (3) In clause 2.1(2)(b) delete “;” and insert “;”.
- (4) Delete clause 2.1(2)(c).
- (5) Delete clause 2.1(3).

2.5 Part 4 replaced

Replace Part 4 with:

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.

2.6 Part 5 and Part 6 inserted

After Part 4 insert:

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) This local law is subject to section 3.25, 3.27 and Schedules 3.1 and 3.2 of the Local Government Act 1995 and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the 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*.

2.7 Schedule 1 replaced

Delete Schedule 1 and insert:

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*.

2.8 Schedule 3 deleted

Delete Schedule 3.

Dated this 8th day of March 2022.

The Common Seal of the City of Joondalup was hereunto affixed pursuant to a resolution of Council in the presence of –

Hon. ALBERT JACOB, JP, Mayor

Mr JAMES PEARSON, Chief Executive Officer