

CITY OF BELMONT
LOCAL LAWS RELATING TO FENCING
LOCAL GOVERNMENT ACT 1995

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LOCAL GOVERNMENT ACT 1995

CITY OF BELMONT

LOCAL LAWS RELATING TO FENCING

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of City of Belmont resolved to make the following local laws on the 13th day of August 2001.

PART 1 – PRELIMINARY

1. Citation

These Local Laws may be cited as the *City of Belmont Local Laws Relating to Fencing*.

2. Repeal

The City of Belmont Local Laws Relating to Fencing published in the *Government Gazette* of 4 June 1982, are repealed.

3. Application of Local Laws

- (1) Subject to any requirements under a town planning scheme, these Local Laws apply throughout the district.
- (2) Where there is any inconsistency between these Local Laws and a town planning scheme, the provisions of the town planning scheme prevail.

4. Interpretation

In these Local Laws, unless the context requires otherwise:

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

“AS” means an Australian Standard published by the Standards Association of Australia;

“boundary fence” has the meaning given to it for the purposes of the Act;

“Building Surveyor” means a Building Surveyor of the local government;

“CEO” means the Chief Executive Officer of the local government;

“Commercial Lot” means a lot where a commercial use –

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

“dangerous” in relation to any fence means:

- (a) an electrified fence other than a fence in respect of which a licence under Part 5 of these Local Laws has been issued and is current;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with these Local Laws;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

“district” means the district of the local government;

“dividing fence” has the meaning given to it in and for the purposes of the Act;

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

“fence” means any structure, including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

“frontage” means the boundary line between a lot and the thoroughfare upon which that lot abuts;

“height” in relation to a fence means the vertical distance between:

- (a) the top of the fence at any point; and
- (b) 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; or
- (c) in the case of a fence across the front boundary of a Residential Lot means the ground level external to the frontage of the Lot and the top of the fence inclusive of any retaining wall; and

“Industrial Lot” means a lot where an industrial use –

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

“local government” means the City of Belmont;

“lot” has the meaning given to it in and for the purposes of *the Town Planning and Development Act 1928*;

“notice of breach” means a notice referred to in clause 15(1);

“open construction” in reference to a fence, means a fence with not less than one third of the face of the fence being visually open for the total length of the fence;

“Residential Lot” means a lot where a residential use –

- (a) is or may be permitted under the town 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;

“Schedule” means a Schedule to these Local Laws;

“setback area” has the meaning given to it for the purposes of the town planning scheme;

“sufficient fence” means a fence described in clause 6; and

“town planning scheme” means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*.

5. Licence Fees and Charges

All licence fees and charges applicable under these Local Laws shall be as determined by the local government from time to time in accordance with section 6.16 of the *Local Government Act 1995*.

PART 2 – SUFFICIENT FENCES

6. Sufficient Fences

- (1) Unless by agreement between the owners of adjoining properties, a person shall not erect a dividing fence or a boundary fence that is not sufficient fence.
- (2) Subject to sub-clauses (3) and (4), and any provision contained in a town planning scheme, a sufficient fence:
 - (a) on a Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
 - (b) on a Commercial Lot and on an Industrial Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule.
- (3) Where a fence is erected on or near the boundary between:
 - (a) a Residential Lot and an Industrial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;

- (b) a Residential Lot and a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule;
- (4) Unless the Building Surveyor specifies otherwise a sufficient fence on a boundary between lots other than those specified in subclause (3) is a dividing fence constructed in accordance with the specifications and requirements of the Second Schedule.
- (5) Notwithstanding any other provisions in these Local Laws, a fence constructed of brick, stone, concrete or any other masonry product shall be a sufficient fence only if it is designed by a structural engineer where:
 - (a) it is greater than 1800mm in height; or
 - (b) the Building Surveyor so requires.

PART 3 – GENERAL

7. Fences Within Front Setback Areas

- (1) A person shall not, without the written consent of the Building Surveyor, erect a fence greater than 1200mm in height, within the front setback area of a Residential Lot within the district.
- (2) The Building Surveyor may approve the erection of a fence of a height greater than 1200mm in the front setback area of a Residential Lot only if the fence on each side of the driveway into the Lot across the front boundary is to be angled into the Lot for a distance of not less than 1500mm along the frontage to a distance of not less than 1500mm from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.
- (3) In the case of a fence across the front boundary of a Residential Lot –
 - (a) the fence shall be of open construction, or where the fence includes a retaining wall that portion of the fence above the retaining wall shall be of open construction; and
 - (b) where the fence includes a retaining wall, the height of the fence above the retaining wall shall not exceed 1200mm.
- (4) A fence across the front boundary of a Residential Lot shall not be constructed of corrugated fibre cement sheeting, steel sheeting or similar material whether as a singular method of construction or as part of a composite fence.
- (5) Subclause (4) shall not apply in respect of a fence lawfully erected under a written law prior to the coming into operation of these Local Laws.

8. Maintenance of Fences

An owner and occupier of a lot on which a fence is erected shall maintain the fence in good condition and so as to prevent it from becoming dangerous, dilapidated, or unsightly.

9. General Discretion of the Local Government

- (1) Notwithstanding clause 6, the local government may consent to the erection or repair of a fence which does not comply with the requirements of these Local Laws.
- (2) In determining whether to grant its consent to the erection or repair of any fence, the local government may consider, in addition to any other matter that it is authorized to consider, whether the erection or retention of the fence would have an adverse effect on:
 - (a) the safe or convenient use of any land; or
 - (b) the safety or convenience of any person.

PART 4 – FENCING MATERIALS

10. Fencing Materials

- (1) A person shall construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only brick, stone, concrete, wrought iron, tubular steel, link mesh, timber, plastic coated or galvanized link mesh, corrugated fibre reinforced cement sheeting, pre-painted steel sheeting or a material approved by the Building Surveyor.
- (2) Where the Building Surveyor approves the use of pre-used materials in the construction of a fence under subclause (1), that approval shall be conditional on the applicant for approval painting or treating the pre-used material as directed by the Building Surveyor.

11. Barbed Wire and Broken Glass Fences

- (1) This clause does not apply to a fence constructed wholly or partly of razor wire.
- (2) An owner or occupier of a Residential Lot or a Commercial Lot shall not erect or affix to any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the prior written approval of the Building Surveyor has been obtained.
- (3) An owner or occupier of an Industrial Lot shall not erect or affix on any fence bounding that Lot any barbed wire or other materials with spiked or jagged projections unless the wire or materials are carried on posts at an angle of 45 degrees, and unless the bottom row of wire or other materials is set back 150mm from the face of the fence and is not nearer than 2000mm from the ground level.
- (4) If the posts which carry the barbed wire or other materials referred to in subclause (3) are angled towards the outside of the lot bounded by the fence the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.
- (5) An owner or occupier of a lot shall not affix or allow to remain as part of any fence or wall, whether internal or external, on that lot any broken glass.

PART 5 – ELECTRIFIED AND RAZOR WIRE FENCES

12. Requirements for a Licence

- (1) An owner or occupier of a lot shall not:
 - (a) have and use an electrified fence on that lot without first obtaining a licence under subclause (2); or
 - (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under subclause (3).
- (2) A licence to have and use an electrified fence shall not be issued:
 - (a) in respect of a lot which is or which abuts a Residential Lot;
 - (b) unless the fence complies with AS/NZS 3016:1994; and
 - (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.
- (3) A licence to have a fence constructed wholly or partly of razor wire shall not be issued:
 - (a) if the fence is within 3m of the boundary of the lot;
 - (b) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.
- (4) An application for a licence referred to in subclauses (2) or (3) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.
- (5) An application for a licence referred to in subclauses (2) or (3) may be:
 - (a) approved by the local government;

- (b) approved by the local government subject to such conditions as it thinks fit; or
- (c) refused by the local government.

13. Transfer of a Licence

A licence referred to in clause 13 shall transfer with the land to any new occupier or owner of the lot.

14. Cancellation of a Licence

Subject to Division 1 Part 9 of the *Local Government Act 1995*, the local government may cancel a licence issued under this Part if –

the fence no longer satisfies the requirements specified in clause 12(2) or 12(3) as the case may be; or the licence holder breaches any condition upon which the licence has been issued.

PART 6 – NOTICES OF BREACH

15. Notices of Breach

- (1) Where a breach of any provision of these Local Laws has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner or occupier of that lot “notice of breach”.
- (2) A notice of breach shall:
 - (a) specify the provision of these Local Laws which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner or occupier of the lot is required to remedy the breach within 28 days from the giving of the notice.
- (3) Should an owner or occupier 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 or occupier of the lot, as the case may be, in a court of competent jurisdiction.

PART 7 – OFFENCES

16. Offences and Penalties

- (1) An owner or occupier who fails to comply with a notice of breach commits an offence and is liable upon conviction to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.
- (2) A person who fails to comply with or who contravenes any provision of these Local Laws commits an offence and is liable to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

17. Modified Penalties

- (1) An offence against any provision of these Local Laws 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 these Local Laws is \$100.

18. Form of Notices

For the purposes of these Local Laws –

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

FIRST SCHEDULE

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

Each of the following is a “sufficient fence” on a Residential Lot:

- A A fully enclosed timber fence built to manufacturer's specifications or in accordance with established construction techniques, the height of the fence to be 1800mm except with respect to the front setback area for which there is no minimum height but which is subject to clause 7.
- B A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting erected to manufacturer's specifications or which otherwise satisfies the following specifications:
- (a) 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;
 - (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
 - (c) the sheets to be lapped and capped with extruded “snap-fit” type capping in accordance with the manufacturer's written instructions; and
 - (d) the height of the fence to be 1800mm except with respect to the front setback area for which there is no minimum height but which is subject to clause 7.
- C A fence constructed of brick, stone, concrete or any other masonry product erected to the manufacturer's specifications or relevant Australian Standard or which otherwise satisfies the following specifications:
- (a) footings of minimum 225mm x 150mm concrete 15MPA or 300mm x 175mm brick laid in cement mortar;
 - (b) fences to be offset a minimum of 200mm at maximum 3000mm centres or 225mm x 100mm engaged piers to be provided at maximum 3000mm centres;
 - (c) expansion joints in accordance with the manufacturer's written instructions; and
 - (d) the height of the fence to 1800mm except with respect to the front setback area for which there is no minimum height but which is subject to clause 7.

- D A composite fence having a minimum overall height of 1800mm except with respect to the front setback area for which there is no minimum height but which is subject to clause 7, which satisfies the following specifications for the brick construction:
- (1)
 - (a) brick piers of minimum 345mm x 345mm at 2700mm centres with an infill wall to a maximum height of 600mm bonded to the piers;
 - (b) each pier shall be reinforced with one R10 galvanised starting rod 1500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) below ground level;
 - (c) the minimum ultimate strength of brickwork shall be 20MPa. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
 - (d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
 - (e) control joints in brickwork shall be provided at 6 metres centres unless an appropriately qualified engineer certifies that a wider spacing is appropriate; or
 - (2)
 - (a) brick piers of minimum 345mm x 345 mm x 2700mm centres bonded to the base wall; and
 - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified.

SECOND SCHEDULE

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT

Each of the following is a “sufficient fence” on a Commercial Lot and an Industrial Lot:

- A. A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications:
 - (a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
 - (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centers and with footings of a 225mm diameter x 600mm;
 - (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post and with footings 225mm x 600mm;
 - (d) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15mm wires twisted together or single 4mm wire;
 - (e) rail-less link, chain or steel mesh is to be a height of 2000mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm in accordance with clauses 11(2) and (3) of these Local Laws; and
 - (f) galvanised link mesh wire to be 2000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6m and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.

- B. A fence of fibre reinforced cement sheet or metal sheeting constructed to the minimum specifications referred to in Item B of the First Schedule.

- C. Fences of timber, brick, stone, concrete or any other masonry product constructed to the minimum specifications referred to in the First Schedule.

Dated this thirteenth day of August 2001.

The Common Seal of the)
City of Belmont was)
affixed in the presence of:)

P R PASSERI JP, MAYOR

B R GENONI, CEO