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LOCAL GOVERNMENT ACT 1995

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**CITY OF MANDURAH**

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**FENCING LOCAL LAW 2015**



**LOCAL GOVERNMENT ACT 1995**

## CITY OF MANDURAH

**FENCING LOCAL LAW 2015**

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## LOCAL GOVERNMENT ACT 1995

## CITY OF MANDURAH

## FENCING LOCAL LAW 2015

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Mandurah resolved on 23 June 2015 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *City of Mandurah Fencing Local Law 2015*.

## 1.2 Definitions

In this local law, unless the context otherwise requires—

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

**building permit** is a permit granted under section 20 of the *Building Act 2011*;

**Building Regulations** means *Building Regulations 2012*;

**Commercial Lot** means a lot zoned commercial, service commercial, or business/residential or an equivalent commercial zone under a town planning scheme and/or Structure Plan, but does not include a lot occupied by a residential building;

**dangerous** in relation to any fence means—

- (a) an electrified fence which does not comply with clause 7.1 of this local law;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with this local law;
- (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** 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;

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

**fence** means any structure used or functioning as a barrier, irrespective of where it is located and includes any affixed gate or screening;

**height** in relation to a fence means the vertical distance between the top of the fence at any point and—

- (a) the ground level; or
- (b) where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point; or
- (c) where the fence is erected on a retaining wall approved by the local government, from the top of the retaining wall;

**Industrial Lot** means a lot zoned Industry or an equivalent industrial zone under a town planning scheme and/or Structure Plan within the district;

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

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

**occupier** has the meaning given to it in and for the purposes of the *Local Government Act 1995*;

**owner** has the meaning given to it in and for the purposes of the *Dividing Fences Act 1961*;

**planning approval** means approval issued by the City under its town planning scheme;

**residential building** has the meaning given to it in State Planning Policy 3.1 Residential Design Codes;

**Residential Lot** means a lot zoned residential or tourist under the town planning scheme and/or Structure Plan;

**retaining wall** means any structure approved by the local government 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 zoned rural under a town planning scheme and/or Structure Plan within the district;

**Rural Residential Lot** means a lot zoned rural residential under the town planning scheme;

**screening** means any perforated panels or trellises composed of solid or obscured translucent panels;

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

**street setback area** has the meaning given to it for the purposes of the Residential Design Codes of Western Australia;

**structure plan** has the meaning given to it in the town planning scheme;

**sufficient fence** means a fence described in clause 2.1 of this local law;

**town planning scheme** means any gazetted town planning scheme operating within the district;

**uniform fence** means a fence erected by a developer or subdivider in accordance with a subdivision or development approval which divides a lot from a public place such as pedestrian access way, public open space or road reserve;

**visually permeable** means the surface of a fence which has—

- (a) continuous vertical or horizontal gaps of at least 50mm width occupying not less than one third of its face in aggregate of the entire surface or where gaps are narrower than 50mm, occupying not less than one half of its face in aggregate of the entire surface, as viewed directly from the street; or
- (b) a surface offering equal or lesser obstruction to view.

### 1.3 Repeal

Divisions 2, 3 and 5 of Part IX of the *City of Mandurah Consolidated Local Laws* as published in the *Government Gazette* of 13 February 1998 are repealed.

### 1.4 Application

This local law applies throughout the district.

### 1.5 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

### 1.6 Relationship with other laws

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

## PART 2—SUFFICIENT FENCES

### 2.1 Sufficient Fences

- (1) A person shall not erect a dividing fence or fence that is not a sufficient fence, unless otherwise approved or required by the local government.
- (2) A dividing fence or fence erected prior to 8 April 1988 or lawfully erected prior to this local law coming into operation constitutes a sufficient fence.
- (3) Subject to subclause (4) and (5), a sufficient fence—
  - (a) on a residential and commercial lot is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 1 and is located behind the specified street setback area;
  - (b) on an industrial lot is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 2; and
  - (c) on a rural lot or rural residential lot is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.
- (4) Where a fence is erected on or near the boundary between—
  - (a) a residential lot and an industrial lot, a sufficient fence is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 1;
  - (b) a residential lot and a rural lot or a rural residential lot, a sufficient fence is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 1.
- (5) Unless otherwise approved or required by the local government, a sufficient fence between lots other than those specified in subclause (4) is a fence constructed and maintained in accordance with the specifications and requirements of Schedule 1.

**PART 3—FENCING WITHIN THE PRIMARY STREET, (FRONT) SETBACK AREA****3.1 Fences Within Primary Street (front) Setback Area**

- (1) On a residential lot a fence erected within the primary street setback area shall:
  - (a) comply with State Planning Policy 3.1—Residential Design Codes;
  - (b) not exceed a height of 1.8m except that piers with a maximum dimension of 350x350mm may extend to a maximum height of 2.1m. Where a fence that faces a street is placed on or adjacent to a retaining wall, the maximum height to the top of the fence from the lower ground level may be 2m or a maximum fence height of 1m above the top of the retaining wall; and
  - (c) be constructed of face finished brick or stone or timber palings, or a combination of the aforementioned materials, or similar, that complement the dwelling and do not detract from the street scape. Fibre cement sheet or sheet metal are not considered suitable.
- (2) On a commercial lot, no fence shall be erected forward of the front setback line.
- (3) On an industrial lot, a fence erected within the front setback line shall be visually permeable above 1.2m and not exceed a height of 2.4m.
- (4) All fences shall be truncated or reduced to no higher than 750mm within 1.5m adjoining a vehicle access point where a driveway meets a public street and where 2 streets intersect.
- (5) Subclause (4) shall not apply to a visually permeable fence that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare.

**PART 4—FENCING MATERIALS, SCREENING AND MAINTENANCE****4.1 Fencing Materials**

- (1) Subject to clause 2.1, a person shall only construct a fence from materials specified in the Schedules of this local law, unless otherwise approved or required by the local government.
- (2) Uniform fencing shall be constructed predominantly from new materials as described in the Schedules and where required by the local government, incorporate visually permeable sections above 1.2m to the satisfaction of the local government.
- (3) Pre-used materials shall not be permitted in the construction of a fence, unless the pre-used materials are structurally fit for the purpose, painted, treated and/or upgraded to the satisfaction of the local government.
- (4) No person shall erect a fence of impervious material in any place, position or location where it will, or is likely to, act as a barrier to or restrict the flow of a natural watercourse.

**4.2 Screening**

- (1) Any screening affixed to a fence shall be designed to integrate with the colours, materials and specification of that sufficient fence to the satisfaction of the local government.
- (2) On a rural lot or rural residential lot, no person shall affix any screening to a fence.
- (3) Screening affixed to a fence shall be installed and maintained in accordance with the manufacture's specifications and not compromise the structural integrity of a fence.

**4.3 Barbed or Razor Wire or Other Material with Spiked or Jagged Projections**

- (1) A person shall not erect or affix to any fence any barbed or razor wire or other material with spiked or jagged projections except in accordance with this clause.
- (2) On an industrial lot a person shall not erect or affix to any fence bounding that lot any barbed wire or razor wire or other materials with spiked or jagged projections unless the wire or material are attached on posts vertically or at an angle of 45 degrees, and unless the bottom row of wire or other materials is not less than 2m above the ground level.
- (3) If the posts which carry the barbed wire or other materials referred to in subclause (2) 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.
- (4) On a rural lot, except that where a fence is adjacent to a thoroughfare or other public space, any barbed wire must be fixed to the side of the fence posts furthest from the thoroughfare or other public place.

**4.4 Maintenance of Fences**

- (1) An owner or occupier shall maintain a fence in good condition and prevent it from becoming damaged, dangerous, dilapidated, unsightly or detrimental to the amenity of the locality.
- (2) An owner or occupier of a lot on which a uniform fence is erected shall not alter the fence in any way, or enclose or screen any visually permeable sections of the fence.

**4.5 Gates in Fences**

Any gate or door must not encroach into or over any other property.

**PART 5—TENNIS COURT FENCES****5.1 Tennis Court Fencing**

- (1) A person must not, without the written consent of the City, erect or maintain a fence around a tennis court.
- (2) Fencing surrounding a tennis court shall be constructed and maintained in accordance with the specifications and requirements of Schedule 4.

**PART 6—RIGHT-OF-WAYS, PUBLIC ACCESS WAYS OR ROAD RESERVES****6.1 Fences Across Right-of-Ways, Public Access Ways or Road Reserves**

A person must not, without the written consent of the City, erect or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or road reserve so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

**PART 7—ELECTRIFIED FENCES****7.1 Electrified Fencing**

On a rural lot or industrial lot, an electrified fence shall—

- (a) comply with AS/NZS 3016:2002 Electrical Installations—Electric Security Fences (as amended);
- (b) comply with any requirements of Western Power;
- (c) be inoperable during hours of business; and
- (d) be designed to integrate with the colours, materials and specification of a sufficient fence.

**PART 8—APPLICATION REQUIREMENTS****8.1 Requirements for an approval from Local Government**

- (1) Where approval is required from the local government under these local laws and approval is not required in the form of planning approval or a building permit, then a written application to the City to seek an approval under these local laws will apply.
- (2) An owner or occupier of a lot, other than a rural lot, must not—
  - (a) have or use an electrified fence on that lot—
    - (i) without first obtaining a building permit or written approval of the local government; and
    - (ii) except in accordance with that permit or approval; or
  - (b) construct a fence wholly or partly of barbed or razor wire or other material with jagged or spiked projections on that lot—
    - (i) without first obtaining a building permit or written approval of the local government; and
    - (ii) except in accordance with that permit or approval
- (3) Approval to install an electrified fence on a fence will not be given;
  - (a) if the lot abuts a residential lot; and
  - (b) 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.
- (4) Approval to install razor wire on a fence will not be given;
  - (a) if the fence is within 3m of the boundary of the lot; or
  - (b) where any razor wire used in the construction of the fence is less than 2m or more than 2.4m above the ground level.

**8.2 Application for Approval**

- (1) An owner of a lot may apply to the local government for any discretionary matter contained within this local law.
- (2) An application must be—
  - (a) in writing in a form approved by the local government;
  - (b) accompanied by any document or information that is required by the local government; and
  - (c) accompanied by an application fee.

**8.3 Determination of Applications**

- (1) The local government may approve the erection of a fence that does not comply with the requirements of this local law.
- (2) In determining whether to grant its consent to the erection, the local government may consider, in addition to any other matter that it is authorised to consider, whether the erection or retention of the fence would have an adverse impact on—
  - (a) the safe or convenient use of any land;
  - (b) the safety or convenience of any person; or
  - (c) the visual amenity of the streetscape or neighbouring properties.

- (3) All licence fees and charges applicable under this local law shall be determined by the local government from time to time in accordance with section 6.16 of the *Local Government Act 1995*.
- (4) An application submitted to the local government under this local law may be—
- approved by the local government;
  - approved by the local government subject to conditions as the local government sees fit; or
  - rejected by the local government.
- (5) Where the local government approves an application subject to conditions, the applicant must comply with those conditions.
- (6) The local government may by written notice amend a condition imposed under subclause (4)(b).
- (7) An amendment under subclause (6) is effective from the date specified in the notice.

#### **8.4 Transfer of an Approval under these Local Laws**

- (1) An approval which is provided by the local government under this local law is deemed to transfer to each successive owner or occupier of the lot to which the approval applies.
- (2) Where an approval is transferred under this clause, the successive owner or occupier may apply to the local government for a written confirmation of this transfer.
- (3) If the local government approves an application under this clause, it may issue a written confirmation to the applicant in the form determined by the local government.

#### **8.5 Cancellation of an approval**

The local government may cancel an approval if—

- the owner or occupier requests the local government to do so;
- the fence to which the approval applies has been demolished and is not rebuilt for a period of 6 months;
- the circumstances have changed in such a way that an approval for the fence could no longer be granted under the local law;
- the owner or occupier fails to comply with a condition of the permit or breaches a provision of this local law in respect of the fence; or
- the owner or occupier fails to comply with a notice of breach issued under clause 9.1.

#### **8.6 Objections and appeals**

Division 1 of Part 9 of the *Local Government Act 1995* applies to a decision under this local law to—

- refuse an application for an Approval;
- impose or vary an Approval condition;
- cancel an Approval; or
- give a person a notice under clause 9.1.

### **PART 9—OFFENCES AND ENFORCEMENT**

#### **9.1 Notice 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 or occupier of that lot.
- (2) A notice shall—
- specify the provision of the local law that has been breached;
  - specify the particulars of the breach; and
  - 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, 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 doing so from the owner or occupier of the lot, as the case may be, 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 onto land will be in accordance with Part 3, Division 3 of that Act.

#### **9.2 Offences**

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) An offence against a clause specified in Schedule 5 is a prescribed offence for the purposes of section 9.16(1) of the *Local Government Act 1995*.
- (3) Any person who commits an offence under this local law is liable, upon conviction to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

#### **9.3 Modified Penalties**

Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is \$200.

#### 9.4 Infringement Notices

For the purpose of this local law—

- (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 infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in or substantially 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 AND COMMERCIAL LOT BEHIND THE PRIMARY STREET SETBACK

[Clause 2.1(3)(a)]

Each of the following is a sufficient fence on a residential and commercial lot—

Refer to clause 3.1 for fences within the primary street setback area.

- (a) Timber fence which satisfies the following specifications—
  - (i) an average height of 1.8m;
  - (ii) construction to be in accordance with the manufacturers specifications;
  - (iii) timber panelling to provide a solid cover to provide a solid screen except where the fence is located within the street setback area;
  - (iv) all timber is to be treated for protection from termite attack in accordance with the relevant AS/NZS.
- (b) Fibre reinforced pressed cement sheeting which satisfies the following specifications—
  - (i) an average height of 1.8m;
  - (ii) construction to be in accordance with the manufacturers specifications.
- (c) Masonry (including brick, stone or concrete), which satisfies the following specifications—
  - (i) an average height of 1.8m except where located within the street setback area (Refer to Part 3 of this Local Law);
  - (ii) construction to be in accordance with the AS/NZS for Masonry construction that has been adopted by the Building Code of Australia at the time of construction.
- (d) Metal Panel (eg Colourbond) or PVC panel (eg Duralok) fencing systems that satisfy the following specifications—
  - (i) an average height of 1.8m, except where located within the street setback area (Refer to Part 3 of this Local Law);
  - (ii) construction to be in accordance with the manufacturers specifications.
- (e) Composite fence—
  - (i) a composite of the above fences such as timber posts with solid sheet metal infill and height as specified above.

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#### Schedule 2

### SPECIFICATIONS FOR A SUFFICIENT FENCE ON AN INDUSTRIAL LOT

[Clause 2.1(3)(b)]

Each of the following is a sufficient fence on an industrial lot—

- (a) galvanised steel frame and galvanised link or chain mesh with PVC coat which satisfies the following specifications—
  - (i) generally a height of 2m with posts up to a maximum height of 2.4m with barbed wire or razor mesh where permitted by this local law;
  - (ii) construction to be in accordance with the manufacturers specifications.
- (b) fences of timber, masonry (brick, stone or concrete), fibre cement, metal panel (eg colorbond) or PVC panel (eg Duralok) or composite that satisfies the following specifications—
  - (i) constructed to the minimum specifications referred to in Schedule 1.

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#### Schedule 3

### SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT AND RURAL RESIDENTIAL LOT

[Clause 2.1(3)(c)]

Each of the following is a sufficient fence on a rural lot and rural residential lot—

- (a) Post and Wire Construction—
  - (i) have an average height of 1.2m;

- (ii) timber posts shall be impregnated with a termite and fungicidal preservative;
  - (iii) wire shall be high tensile galvanised wire and not less than 2.5mm;
  - (iv) a minimum of 5 wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases;
  - (v) galvanised iron posts may be used;
  - (vi) star pickets may be used for intermediate posts with PVC safety caps on top;
  - (vii) construction shall be in accordance with manufacturers specifications.
- (b) Post and Rail Construction—
- (i) have a maximum height of 1.4m, a minimum height of 1m and an average height of 1.2m.
  - (ii) timber posts shall be impregnated with a termite and fungicidal preservative;
  - (iii) the fence is to be fitted with a timber top rail and up to 3 intermediate rails;
  - (iv) galvanised wire, including mesh may be used below the timber top rail.

**Schedule 4**  
**SPECIFICATIONS FOR TENNIS COURT FENCING**

[Clause 5.1]

The following is considered a suitable fence surrounding a tennis court—

- (a) black PVC coated cyclone mesh fencing (maximum of 50mm x 50mm gaps) or similar supported by galvanised metal poles installed in accordance with the manufacturers specifications, and
- (b) a height of 3m.

**Schedule 5**  
**OFFENCES IN RESPECT OF WHICH MODIFIED PENALTIES APPLY**

[Clause 9.2]

*City of Mandurah*  
**Fencing Local Law 2015**

<b>Offence No.</b>	<b>Clause No.</b>	<b>Nature of offence</b>	<b>Modified penalty</b>
1	2.1	Erect a dividing fence or boundary fence on a lot that does not meet the minimum requirements for a sufficient fence	\$200
2	4.1(3)	Use pre-used materials in the construction of a fence without approval	\$200
3	4.4(1)	Failure to maintain a fence in good condition/prevent fence from becoming dangerous or dilapidated	\$200
4	4.5	Erect or maintain a gate in a fence that encroaches into or over any other property.	\$200
5	6.1	Erect or maintain a fence/obstruction temporary or permanent across a right-of-way, public access way or road reserve without consent	\$200
6	8.1(2)	Construct or use an electrified fence or a fence wholly or partly of razor wire or barbed wire or other material with spiked or jagged projections without a building permit or approval	\$200
7	9.3	Other offences not specified	\$200

Dated this 29th day of June 2015.

The Common Seal of the City of Mandurah was affixed by authority of a resolution of the Council in the presence of—

MARINA ELIZABETH VERGONE, Mayor.  
MARK R. NEWMAN, Chief Executive Officer.