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DIVIDING FENCES ACT 1961

CITY OF STIRLING

FENCING LOCAL LAW 2008

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DIVIDING FENCES ACT 1961

CITY OF STIRLING

FENCING LOCAL LAW 2008

Under the powers conferred by the *Local Government Act 1995* and all other relevant powers, the Council of the City of Stirling resolved on 2 December 2008 to make this local law.

PART 1—PRELIMINARY**1.1 Citation**

This local law may be cited as the *City of Stirling Fencing Local Law 2008*.

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 Application

This local law applies throughout the District.

1.4 Repeal

The City of Stirling Local Laws 506 to 512 inclusive relating to fences, published in the *Gazette* on 12 May 1971, are repealed.

1.5 Definitions and interpretation

(1) In this local law—

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

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

“**boundary fence**” means a fence, other than a dividing 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 a common boundary;

“**CEO**” means the Chief Executive Officer of the City;

“**City**” means the City of Stirling;

“**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 this local law has been issued and is current;
- (b) a fence containing barbed wire other than a fence constructed 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 City;

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

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

“**electrified fence licence**” means a licence, in the form of Schedule 4, to have and use an electrified fence on the lot to which the licence applies;

“**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 on 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;

“**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;

“**licence**” means an electrified fence licence or a razor wire fence licence;

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

“**notice of breach**” means a notice referred to in clause 5.1(2);

“**owner**”, for the purposes of the definition of “dividing fence”, has the meaning given to it in the Act;

“**owner**”, for all other purposes, has the meaning given to it in the *Local Government Act 1995*;

“**razor wire fence licence**” means a licence, in the form of Schedule 5, to construct a fence wholly or partly of razor wire on the lot to which the licence applies;

“**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;

“**rural lot**” means a lot where a rural use—

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

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

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

“**special rural lot**” means a lot where a special rural use—

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

“**sufficient fence**” means a fence described in clause 2.2; and

“**town planning scheme**” means a local planning scheme of the City made under the *Planning and Development Act 2005*.

(2) A reference to an Australian Standard is to that Australian Standard as it is amended from time to time.

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 other written law in respect of a building licence for a fence.

1.7 Provisions of the Act, Regulations and other legislation

(1) In this local law—

(a) provisions of the *Dividing Fences Act 1961*, the *Local Government Act 1995*, the *Planning and Development Act 2005* and of other legislation, are reproduced in a boxed format; and

(b) notes are also included in a boxed format.

(2) The purpose of reproducing these provisions, and of including the notes, is to assist the reader in the interpretation or administration of this local law.

(3) The reproduced provisions of the *Dividing Fences Act 1961*, the *Local Government Act 1995*, the *Planning and Development Act 2005* and other legislation, and the notes—

(a) are to be treated as footnotes and are not part of this local law (see section 32(2) of the *Interpretation Act 1984*); and,

(b) reproduce only the provisions, or refer only to the provisions, that were in force at the time that the Council resolved to adopt this local law and, therefore, may not necessarily be accurate at a future date.

PART 2—SUFFICIENT FENCES

2.1 Only sufficient fences to be constructed

(1) A person must not construct a dividing fence or a boundary fence that is not a sufficient fence.

(2) Subclause (1) does not apply in respect of a dividing fence if—

(a) all the owners of land adjoining the land on which the dividing fence is to be constructed agree on the kind of dividing fence that is to be constructed; or

(b) the dividing fence is determined to be a sufficient fence, for the purposes of the Act, by a court under the Act.

(3) Subclause (1) does not apply in respect of a boundary fence if all the owners of land adjoining the land on which the boundary fence is to be constructed agree on the kind of boundary fence that is to be constructed.

2.2 Meaning of “sufficient fence”

- (1) A dividing fence is a sufficient fence if it is constructed on or near the boundary between—
- (a) a residential lot and an industrial lot and is constructed and maintained in accordance with the specifications in Schedule 1;
 - (b) a residential lot and a commercial lot and is constructed and maintained in accordance with the specifications in Schedule 1;
 - (c) a residential lot and a rural lot and is constructed and maintained in accordance with the specifications in Schedule 1;
 - (d) a residential lot and a special rural lot and is constructed and maintained in accordance with the specifications in Schedule 1; and
 - (e) a special rural lot and a rural lot and is constructed and maintained in accordance with the specifications in Schedule 3.
- (2) If subclause (1) does not apply, a dividing fence or a boundary fence is a sufficient fence if the dividing fence or the boundary fence is—
- (a) on a residential lot and is constructed and maintained in accordance with the specifications in Schedule 1;
 - (b) on a commercial lot or an industrial lot and is constructed and maintained in accordance with the specifications in Schedule 2; or
 - (c) on a rural lot or on a special rural lot and is constructed and maintained in accordance with the specifications in Schedule 3.
- (3) Despite subclauses (1) and (2), a dividing fence or a boundary fence is a sufficient fence if it is determined by the City to be a sufficient fence.
- (4) In considering whether to determine that a dividing fence or a boundary fence is a sufficient fence even though it does not comply with subclauses (1) or (2), the City may take into account whether the construction 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.

2.3 Other requirements

Nothing in this local law affects the need for compliance, in respect of a fence with—

- (a) any relevant provisions of a town planning scheme; and
- (b) any relevant provisions that apply if a building licence is required for that fence.

PART 3—FENCING MATERIALS AND MAINTENANCE

3.1 Fencing materials

- (1) A person must not construct a fence on a residential lot, a commercial lot or an industrial lot except from—
- (a) the materials specified for a sufficient fence in respect of that lot in Schedule 1 or 2 (as the case may be); or
 - (b) any other material approved in writing by the City.
- (2) If the City approves the use of pre-used materials in the construction of a fence under subclause (1), that approval is to be conditional on the pre-used materials being painted or treated as directed by the City.

3.2 Barbed wire and broken glass fences

- (1) This clause does not apply to a fence constructed wholly or partly of razor wire.
- (2) Unless with the prior written approval of the City, an owner or occupier of a residential lot or a commercial lot must not, on that lot—
- (a) construct a dividing fence or a boundary fence that contains;
 - (b) affix to a dividing fence or a boundary fence; or
 - (c) allow to remain on a dividing fence or a boundary fence, any barbed wire or other material with spiked or jagged projections.
- (3) An owner or occupier of an industrial lot must not—
- (a) construct a dividing fence or a boundary fence that contains;
 - (b) affix to a dividing fence or a boundary fence; or
 - (c) allow to remain on a dividing fence or a boundary fence, any barbed wire or other materials with spiked or jagged projections unless—
 - (d) the barbed wire or materials are carried on posts at an angle of 45 degrees; and
 - (e) the bottom row of barbed wire or other materials is set back at least 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 rural lot must not—

- (a) place or affix barbed wire; or
- (b) allow barbed wire to remain,

on a fence on that lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the side of the fence posts furthest from the thoroughfare or other public place.

(6) An owner or occupier of a lot must not—

- (a) affix any broken glass to; or
- (b) allow any broken glass to remain on or as part of, any fence or wall, whether internal or external, on that lot.

3.3 Maintenance of fences

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

PART 4—ELECTRIFIED AND RAZOR WIRE FENCES

4.1 Requirements for a licence

(1) 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 an electrified fence licence; and
 - (ii) except in accordance with that licence; or
- (b) construct a fence wholly or partly of razor wire on that lot—
 - (i) without first obtaining a razor wire fence licence; and
 - (ii) except in accordance with that licence.

(2) An electrified fence licence, in respect of a lot, can not be issued—

- (a) if the lot is, or 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.

(3) A razor wire fence licence can not be issued in respect of a lot—

- (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 2000mm or more than 2400mm above the ground level.

4.2 Application for a licence

(1) An owner or occupier of land may apply to the City for an electrified fence licence or a razor wire fence licence.

(2) An application for a licence must—

- (a) be in the form determined by the City;
- (b) include—
 - (i) a written consent signed by the owner of the land on which the proposed fence is to be located—unless the applicant is the owner of that land; and
 - (ii) any further information that may be required by the City; and
- (c) be accompanied by any fee imposed by the Council under sections 6.16-6.19 of the *Local Government Act 1995*.

4.3 Determining an application

(1) The City may refuse to consider an application that does not comply with clause 4.2.

(2) The City may—

- (a) approve an application, subject to any conditions that it considers to be appropriate; or
- (b) refuse an application.

(3) If the City approves an application, it is to issue a licence in the form set out in Schedule 4 or Schedule 5 (as the case may be).

(4) The City may vary a condition to which a licence is subject by giving written notice to the licence holder and the varied condition takes effect 7 days after that notice is given.

4.4 Transfer of a licence

(1) A licence is deemed to be transferred to each successive owner or occupier (as the case may be) of the lot to which the licence applies.

(2) On an application by a new owner or occupier, the City is to transfer the relevant licence to that new owner or occupier (as the case may be) by a written endorsement on the licence.

4.5 Cancellation of a licence

The City may cancel a licence if—

- (a) the licensee requests the City to do so;
- (b) the fence to which the licence applies is being demolished and not rebuilt for a period of 6 months;
- (c) the circumstances are such that a licence could not be issued under clause 4.1(2) or (3); or
- (d) the licensee fails to comply with a condition of the licence or breaches a provision of this local law in respect of the fence;
- (e) the licensee fails to comply with a notice under clause 5.1

4.6 Objections and appeals

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

- (a) refuse an application for a licence;
- (b) impose or vary a licence condition;
- (c) cancel a licence; or
- (d) give a person a notice under clause 5.1.

PART 5—ENFORCEMENT

5.1 Notices of breach

(1) The City's powers to give notices, and take action in respect of notices, are contained in the *Local Government Act 1995*.

(2) If, in the opinion of the City, a person has breached a provision of this local law, the City may give to that person a written notice requiring him or her to remedy that breach before the date specified in the notice.

5.2 Offences

(1) A person who fails to comply with a notice under clause 5.1, or contravenes any provision of this local law commits an offence.

(2) A person who commits an offence under this local law is liable, on conviction to a penalty not exceeding \$500 and, if the offence is of a continuing nature, an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

5.3 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.

Schedule 1

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 2.2(1);
- (b) a fence constructed of corrugated fibre reinforced pressed cement or steel sheeting constructed to manufacturer's specifications or which otherwise satisfies the following specifications—
 - (i) 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;
 - (ii) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
 - (iii) the sheets to be lapped and capped with extruded "snap-fit" type capping in accordance with the manufacturer's written instructions; and
 - (iv) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 2.2(1);
- (c) a fence constructed of brick, stone or concrete, which satisfies the following specifications—
 - (i) footings of minimum 225mm x 150mm concrete 15MPA or 300mm x 175mm brick laid in cement mortar pointed on both sides;
 - (ii) 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;
 - (iii) expansion joints in accordance with the manufacturer's written instructions; and
 - (iv) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 2.2(1);

- (d) a composite fence having a minimum overall height of 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 2.2(1), which satisfies the following specifications for the brick construction—
- (i) brick piers of minimum 345mm x 345mm at 1800mm centres bonded to a minimum height base wall of 514mm;
 - (ii) each pier to 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 and with the top of the footing to be 1 course (85mm) below ground level;
 - (iii) the minimum ultimate strength of brickwork is to be 20MPa and mortar is to be a mix of 1 part cement, 1 part lime and 6 parts sand;
 - (iv) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
 - (v) control joints in brickwork are to be provided with double piers at a maximum of 6 metre centres; or
- (e) a composite fence having a minimum overall height of 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 2.2(1), which satisfies the following specifications for the brick construction—
- (i) brick piers of a minimum 345mm x 345mm x 2700mm centres bonded to the base wall; and
 - (ii) each pier shall be reinforced with two R10 galvanised starting rods as previously specified.

Schedule 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT OR AN INDUSTRIAL LOT

Each of the following is a “sufficient fence” on a commercial lot or 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—
- (i) corner posts to be minimum 50mm normal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
 - (ii) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
 - (iii) 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;
 - (iv) 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;
 - (v) rail-less link, chain or steel mesh is to be to 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 clause 3.2(3) of this local law; and
 - (vi) 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 steel sheeting constructed to the minimum specifications referred to in Item (b) of Schedule 1;
- (c) a fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1800mm but no greater than 2400mm; or
- (d) a fence of timber, brick, stone or concrete constructed to the minimum specifications referred to in Schedule 1.

Schedule 3

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT

Each of the following is a ‘sufficient fence’ on a rural lot—

- (a) a non-electrified fence that is a fence of posts and wire construction and satisfies the following specifications—
- (i) wire is to be high tensile wire and not less than 2.5mm;
 - (ii) minimum of 5 wires are to 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.

- (iii) posts are to be of indigenous timber or other suitable material including—
 - (A) timber impregnated with a termite and fungicidal preservative;
 - (B) standard iron star pickets; or
 - (C) concrete;
 - (iv) posts are to be placed at not more than 10 metre intervals, set minimum 600mm in the ground and 1200mm above the ground;
 - (v) if timber posts are used, posts are to be cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn; and
 - (vi) if strainer posts are to be not less than 2250mm long and 150mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000mm in the ground and set at all corners, gateways and fence line angles but not exceeding 200 metres apart; or
- (b) An electrified fence having 4 wires is a sufficient fence that is constructed generally in accordance with (a).

Schedule 4
ELECTRIFIED FENCE LICENCE

This is to certify that
 of
 is licensed , subject to the conditions set out below, to have and use an electrified fence on

 (address)
 from 20 and until this licence is transferred or cancelled.
 Dated 20

.....
 Chief Executive Officer
 City of Stirling

Conditions of licence

The holder of the licence must—

- (a) display the licence in a prominent position on the land or premises on which the electrified fence has been constructed;
- (b) upon the request of the City produce to him or her this licence;
- (c) within 14 days of a change in the ownership or occupation of the land or premises in respect of which the licence has been granted, notify the Chief Executive Officer in writing of the details of that change or those changes;
- (d) obtain the written consent of the City prior to the commencement of any alteration, addition or other work relating to or affecting the electrified fence;
- (e) comply with AS/NZS 3016:1994; and
- (f) following construction of the fence, lodge with Western Power a certificate of installation from a qualified electrician and comply with any requirements of Western Power regarding the construction of the fence.

Transfer by endorsement

This licence is transferred to

 of

 from and including the date of this endorsement.
 Dated 20

.....
 Chief Executive Officer
 City of Stirling

