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LOCAL GOVERNMENT ACT 1995

CITY OF BAYSWATER

**FENCING AND
FLOODLIGHTING LOCAL
LAW 2016**

LOCAL GOVERNMENT ACT 1995

CITY OF BAYSWATER

FENCING AND FLOODLIGHTING LOCAL LAW 2016

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LOCAL GOVERNMENT ACT 1995

CITY OF BAYSWATER

FENCING AND FLOODLIGHTING LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995*, and under all other powers enabling it, the Council of the City of Bayswater resolved on 26 March 2019 to make the following local law.

PART I—PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Bayswater Fencing and Floodlighting Local Law 2016*.

1.2 Repeal

The City of Bayswater By-laws relating to Fencing published in the *Government Gazette* on 22 July 1997 are hereby repealed.

1.3 Commencement

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

1.4 Application

This local law applies throughout the district of the local government.

1.5 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 permit for a fence.

1.6 Definitions

In this local law, unless the context requires otherwise—

AS or AS/NZS 3016:2002 means the “Electrical installations—Electric security fences” Australian/New Zealand Standard published by Standards Australia and amended from time to time;

authorised person means a person authorised by the Local Government to perform all or any of the functions conferred on an authorised person under this local law;

barbed wire means a wire or strand of wires having small pieces of sharply pointed wire twisted around it at short intervals;

Building Act means the *Building Act 2011*;

Building Regulations means the *Building Regulations 2012*;

Chief Executive Officer means the Chief Executive Officer of the City;

City means the City of Bayswater;

commercial area means an area zoned “Hotel”, “Business”, “Office”, “Showroom/Warehouse” or “Service Station” under the Town Planning Scheme and/or Structure Plan;

dangerous in relation to any fence means—

- (a) an electrified fence other than a fence in respect of which a licence under Part 3 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, by reason of its faulty design, location or construction, deterioration of materials, damage by termites, decay, changes in ground levels or any other cause whatsoever;

District means the district of the City of Bayswater;

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

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 a street 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 natural 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 area means an area zoned “Light Industry” or “General Industry” under the Town Planning Scheme and/or Structure Plan;

local government means the City of Bayswater;

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

manufacturers specifications means documented installation instructions produced by a product manufacturer;

notice of breach means a written document provided to a person which outlines remedial works required to comply with this local law;

primary street unless otherwise designated by the local government, is the sole or principal public road that provides access to the major entry (front door) to the dwelling;

residential area means an area which is zoned—

- (a) “Residential”;
- (b) “Medium Density Residential”; or
- (c) “Special Purpose” where the predominant use of that land is of a residential nature; under the Town Planning Scheme; and
- (d) any land used principally for residential purposes;

razor wire means a metal wire or ribbon with sharp edges or studded with small sharp blades;

Residential Design Codes means the State Planning Policy 3.1 Residential Design Codes;

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;

street setback area means the area between the street alignment and the street setback line as set out in Tables 1 and 4 of the Residential Design Codes;

structure plan has the same meaning given to it in the Town Planning Scheme;

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

Western Power means the statutory corporation established by the *Electricity Corporations Act 2005*.

PART 2—GENERAL

Dividing fences in a residential area

2.1 A dividing fence in a residential area, which is within the primary street setback area must be erected and maintained in accordance with the specifications contained in Schedule 2, and the requirements of the Residential Design Codes as amended from time to time.

2.2 A dividing fence in a residential area, which is behind the primary street setback area must be erected and maintained in accordance with the specifications contained in schedule 2, and to a height of 1800 millimetres to a maximum of 2100 millimetres with the affected adjoining neighbours consent.

2.3 A dividing fence in a residential area, other than in accordance with Clause 2.1 and 2.2 requires a development approval.

Dividing fences in a commercial area or an industrial area

2.4 A person shall not, commence to erect or maintain a fence in a Commercial Area or an Industrial Area other than in accordance with the specifications contained in Schedule 2 or 3 or any other dividing fence unless development approval has been granted.

A building permit will be required where applicable under the Building Act and Building Regulations.

Gate in a fence

2.5 (1) A person shall not erect a gate in a fence other than a fence adjacent to a primary street boundary which does not—

- (a) open into the lot on which the gate is proposed; or
- (b) open by sliding parallel to a primary street boundary and on the inside of the fence, on which the gate is proposed and which it forms part of, when closed.

(2) A person shall not, without the written consent of an authorised person, install a gate which permits entry into or onto a reserve under the management of the local government. Written consent will only be granted if all of the following criteria have been met—

- (a) gate to be of solid construction;
- (b) consistent in height with the fence in which it is installed;
- (c) open inward, self-closing and lockable; and
- (d) be a maximum width of 1200 millimetres.

Maintenance of fences

2.6 An owner or occupier shall maintain a fence to the local government's satisfaction and prevent it from becoming damaged, dangerous or dilapidated.

Barbed wire fences

2.7 A person shall not erect, commence to erect or maintain a fence constructed wholly or partly of barbed wire except in an Industrial Area or a Commercial Area where—

- (a) the barbed wire is 2000 millimetres or more above ground level; and
- (b) the fence does not abut a Residential Area.

Tennis court fencing and floodlighting

2.8 (1) A person shall not erect, commence to erect or maintain a fence around or partly around a tennis court unless—

- (a) the fence is not more than 3600 millimetres in height;
- (b) the whole of the fence is at least 900mm from the boundary of the land on which the tennis court is located and any adjoining land unless the owner of that adjoining land has first been given the opportunity to make submissions to the local government on the location of the fence;
- (c) the fence is installed as per the manufacturers or structural engineers specifications; and
- (d) a written application to erect the fence has been made to the Local Government in writing and has been approved by the authorised person in writing.

(2) A person shall not erect, commence to erect, maintain or use floodlights or other exterior lights for illumination of a tennis court unless—

- (a) the owner of each lot adjoining the land upon which the tennis court is located is given the opportunity to make submissions to the Local Government on the erection of the floodlights or other exterior lights;
- (b) light fittings are not more than 3600 millimetres above natural ground level;
- (c) light fittings used are of a type mounted horizontally or of a type approved by the authorised person;
- (d) the level of light from the floodlights or external lights on any lot or street adjoining the land on which the tennis court is located at a distance of greater than 1000 millimetres from the boundary of that land does not exceed 10 lumens;
- (e) where required by an authorised person written approval to the erection of the lighting has been obtained from the Main Roads Department of Western Australia;
- (f) a written application to erect the lighting has been made to the local government and has been approved by an authorised person in writing.

PART 3—ELECTRIFIED AND RAZOR WIRE FENCES

Requirement for a Licence

3.1 (1) A person shall not—

- (a) erect, commence to erect or maintain—
 - (i) an electrified fence; or
 - (ii) a fence constructed wholly or partly of razor wire, without first having applied for and the local government having issued or transferred to that person under this Part a licence to erect or maintain that fence; or
- (b) alter an electrified fence without first obtaining the written consent of an authorised person.

(2) A licence for an electrified fence shall not be issued—

- (a) in respect of premises within or abutting a Residential Area;
- (b) unless the proposed fence complies with AS/NZS 3016:2002; and
- (c) unless provision is made so as to enable the proposed fence to be rendered inoperable during the hours of business operations of the premises where it is erected.

(3) A licence for a fence proposed to be constructed wholly or partly of razor wire shall not be issued—

- (a) in respect of a fence erected within 3000 millimetres of the boundary of a lot; or
- (b) where any razor wire used in the proposed construction of the fence is less than 2000 millimetres or more than 2400 millimetres above ground level.

Licence application

3.2 (1) An application for a licence to erect or maintain an electrified fence or a fence constructed wholly or partly of razor wire shall be—

- (a) in writing addressed to the local government;
- (b) made either—
 - (i) by the owner of the land on which the fence is to be erected; or
 - (ii) by the occupier of that land with the written consent of the owner of the land on which the fence is to be erected; and
- (c) accompanied by—
 - (i) a plan clearly identifying both the land and the location on that land where the fence is to be erected;
 - (ii) plans and specifications of the fence;
 - (iii) any other information that the local government may require to enable the application to be determined;
 - (iv) proof that all necessary approvals for the erection of the fence have been obtained from other statutory authorities; and
 - (v) payment of the prescribed fee.

(2) Upon receipt of an application for a licence, the local government may—

- (a) grant the licence subject to such conditions as it considers appropriate;
- (b) require the applicant to forward to it such further information as the local government may require to enable the application to be determined; or
- (c) refuse to grant the licence.

(3) A licence granted by the local government shall—

- (a) be in the form as set out in Schedule 4;
- (b) be signed by an authorised person;
- (c) in respect of either an electrified fence or a fence constructed wholly or partly of razor wire, be issued upon and subject to the following conditions, namely that the licence holder shall—
 - (i) display the licence in a prominent position on the land on which the fence has been erected;
 - (ii) upon request, produce the licence to an authorised person;
 - (iii) within 14 days of any change in the ownership or occupation of the land in respect of which the licence has been granted, notify the local government in writing of the details of that change or those changes; and
 - (iv) obtain the written consent of an authorised person prior to the commencement of any alteration, addition or other work relating to or effecting the fence; and
- (d) in respect of an electrified fence, be issued upon and subject to the following additional conditions, namely that the licence holder shall—
 - (i) comply with AS/NZS 3016:2002;
 - (ii) following erection of the fence, lodge with Western Power a certificate of installation from a qualified electrician; and
 - (iii) comply with any requirements of Western Power regarding the erection of the fence.

Transfer of a licence

3.3 (1) An application for the transfer of a licence shall be—

- (a) made either—
 - (i) by the owner of the land on which the fence is erected; or
 - (ii) by the occupier of that land with the written consent of the owner of the land on which the fence is erected;
- (b) made in writing addressed to the local government;
- (c) signed by the proposed transferee of the licence and the holder of the licence; and
- (d) forwarded to the local government together with payment of the prescribed fee.

(2) Upon receipt of an application for the transfer of a licence, the local government may—

- (a) grant the licence transfer subject to such conditions as it considers appropriate;
- (b) require the applicant to forward to it such further information as the local government may require to enable the application to be determined; or
- (c) refuse to grant the licence transfer.

(3) Where the local government grants an application for the transfer of a licence—

- (a) an endorsement to that effect, signed by an authorised person, shall be completed on the licence in accordance with the form as stipulated in Schedule 4; and
- (b) the licence shall be subject to the conditions set out in clause 3.2(3)(c) and 3.2(3)(d) of this local law.

Cancellation of a licence

3.4 The local government may, at any time during the currency of a licence, cancel the licence if—

- (a) the licence holder has ceased to be the owner or occupier of the land or premises upon which the fence is erected;
- (b) the licence holder has procured the issue of the licence by means of any false or misleading statement or conduct;
- (c) for safety, environmental, town planning or other reasons the local government considers that the fence should not be retained;
- (d) in respect of an electrified fence, the local government considers that the fence does not comply with AS/NZS 3016:2002; or
- (e) the local government considers that the holder of the licence has, during the currency of the licence, by reason of his or her conduct or on any other grounds become unsuitable or has ceased to be a fit and proper person to hold a licence.

Fees

3.5 (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.

(2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.

(3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.

(4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.

PART 4—OFFENCES**Offences and penalties**

4.1 (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.

Modified penalties

4.2 (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) The amount appearing in the final column of Schedule 1, directly opposite a prescribed offence in that Schedule, is the modified penalty for that prescribed offence.

(3) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is \$250.

Form of notice

4.3 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*.

PART 5—OBJECTIONS AND REVIEW**Objections and review**

5.1 When the local government makes a decision under clause 3.2, the provision of Part 9 Division 1 of the *Local Government Act 1995*, and regulation 33 of the *Local Government (Functions and General) Regulations 1996*, apply to that decision.

SCHEDULE 1—OFFENCES AND MODIFIED PENALTIES

[clause 5.2]

Item No.	Clause No.	Nature of offence	Modified penalties \$
1	2.1	Erect or maintain a fence other than in accordance with the Residential Design Codes within a front setback area or without development approval	250
2	2.2	Erect or maintain a fence behind the primary street setback area above 1800 millimetres to a maximum of 2100 millimetres without the affected adjoining neighbours consent	250

Item No.	Clause No.	Nature of offence	Modified penalties \$
3	2.5(1)(a)	Failure to erect a gate in a fence not opening into the lot	250
4	2.5(1)(b)	Failure to erect a gate in a fence not sliding parallel and inside a fence	250
5	2.6	Failure to maintain a fence to the City's satisfaction and prevent it from becoming damaged, dangerous or dilapidated	250
6	2.7	Erect or maintain a fence using barbed wire in the fence construction without approval	250
7	3.1	Construct, erect or use razor wire in a fence or electrify a fence without approval	250
8	4.2(3)	Other offences not specified	250
9	Schedule 2 & 3	Erect or maintain a fence on a lot that does not meet the requirements for a sufficient fence, unless development approval has been granted	250

SCHEDULE 2—SPECIFICATIONS FOR A SUFFICIENT FENCE IN A RESIDENTIAL AREA

[clause 4.1]

The following is a sufficient fence within a Residential area—

- (a) Subject to subclause (b), in a Residential Area a person shall not construct a fence from a material other than brick, stone, concrete, limestone, glass, modular, wrought iron, tubular steel, timber, corrugated fibre reinforced cement sheeting, colour bonded metal or a material approved by an authorised person; and
- (b) In a Residential Area corrugated fibre reinforced cement sheeting and colour bonded metal is not permitted adjacent to a primary street boundary of a residential dwelling; and
- (c) A fence constructed and maintained in accordance with the specifications and requirements set out in the manufacturers specification of structural engineers details for that material; and
- (d) The height of the fence to be 1800 millimetres to a maximum of 2100 millimetres with the affected adjoining neighbours consent, except with respect to the front setback area for which there is no minimum height but which is subject to the Residential Design Codes; or a fence approved as part of a development approval.

SCHEDULE 3—SPECIFICATIONS FOR A SUFFICIENT FENCE IN A COMMERCIAL AREA OR AN INDUSTRIAL AREA

[clause 4.1]

Each of the following is a sufficient fence within a Commercial or an Industrial area—

- (a) In a Commercial Area or an Industrial Area a person shall not construct a fence from a material other than wrought iron, tubular steel plastic coated or galvanised link mesh, corrugated fibre reinforced cement sheeting, colour bonded metal or a material approved by an authorised person; and
- (b) A fence constructed and maintained in accordance with the specifications and requirements set out in the manufacturers specification of structural engineers details for that material; and
- (c) The height of the fence to be 2000 millimetres on top of which, may upon application and approval, be attached 3 strands of barbed wire carrying the fence to a maximum height of 2400 millimetres; or a fence approved as part of a development approval, and constructed in accordance with clause (b).
- (d) Where a fence is erected on or near the boundary between—
 - (a) a Residential Area and an Industrial Area, a sufficient fence is a dividing fence constructed and maintained in accordance with schedule 2 and the specifications and requirements set out in the manufacturers specification or structural engineers details;
 - (b) a Residential Area and a Commercial Area, a sufficient fence is a dividing fence constructed and maintained in accordance with schedule 2 and the specifications and requirements set out in the manufacturers specification or structural engineers details; and/or
 - (c) a Commercial Area and an Industrial Area, a sufficient fence is a dividing fence constructed and maintained in accordance with schedule 2 or 3 and the specifications and requirements set out in either the manufacturers specification or structural engineers details as determined by the Local Government.

SCHEDULE 4

Form 1

LICENCE TO ERECT OR RETAIN AN ELECTRIFIED FENCE IN ACCORDANCE WITH AS/NZS 3016:2002

This is to certify that ... of ... is licensed, subject to the conditions set out below, to erect and/or* retain and/the* electrified fence on ...

(*Delete whichever is not applicable)

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

Authorised Person City of Bayswater

This licence is issued upon and subject to the following conditions, namely that the holder of the licence shall—

- 1. Display the licence in a prominent position on the land or premises on which the electrified fence has been erected. 2. Upon the request of an authorised person produce to him or her the licence. 3. 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 City in writing of the details of that change or those changes. 4. Obtain the written consent of the Local Government prior to the commencement of any alteration, addition or other work relating to or affecting the electrified fence. 5. Comply with AS/NZS 3016:2002. 6. Following erection 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 erection of the fence.

Transfer Endorsement

This licence is transferred to ... of ... from and including the date of this endorsement.

Dated this ... day of ... 20

Authorised Person City of Bayswater

Form 2

LICENCE TO ERECT OR RETAIN A FENCE CONSTRUCTED WHOLLY OR PARTIALLY OF RAZOR WIRE

This is to certify that ... of ... is licensed, subject to the conditions set out below, to erect and/or* retain and/the* fence constructed wholly or partially of razor wire on ...

(*Delete whichever is not applicable)

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

Authorised Person City of Bayswater

This licence is issued upon and subject to the following conditions, namely that the holder of the licence shall—

- 1. Display the licence in a prominent position on the land or premises on which the fence has been erected. 2. Upon the request of an authorised person produce to him or her the licence.

