

LG301\*

**LOCAL GOVERNMENT ACT 1995**

**DIVIDING FENCES ACT 1961**

*City of Albany*

**FENCING LOCAL LAW 2010**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 15 June 2010 to make the following local law.

**PART 1 — PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *City of Albany Fencing Local Law 2010*.

**1.2 Repeal**

The *City of Albany Local Laws Relating to Fencing 2001* as published in the *Government Gazette* on 15 January 2002 are repealed.

**1.3 Application of local law**

This local law applies throughout the district.

**1.4 Commencement**

This local law will come into operation 14 days after the day it is published in the *Government Gazette*.

**1.5 Interpretation**

In this local law 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 local 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 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**” 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;

“**industrial lot**” means a lot where an industrial use—

(a) is or may be permitted under the local planning scheme; and

(b) is or will be the predominant use of the lot;

“**local government**” means the City of Albany;

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

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

“**notice of breach**” means a notice referred to in clause 6.1;

“owner” has the meaning given to it in the Act;

“residential lot” means a lot where a residential use—

- (a) is or may be permitted under the local 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 local 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 local planning scheme;

“special residential lot” means a lot where a special residential use—

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

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

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

“sufficient fence” means a fence described in clause 2.1.

### 1.6 Licence fees and charges

All licence fees and charges applicable under this local law 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

### 2.1 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 a sufficient fence.

(2) Subject to subclauses (3) and (4), 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 Schedule 1;
- (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 Schedule 2;
- (c) on a rural lot, a special residential lot and a special rural lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3;

(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 Schedule 1;
- (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 Schedule 2;
- (c) a residential lot and a rural lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 3;
- (d) a residential lot and a special rural lot or a special residential lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1; and
- (e) a special residential lot or a special rural lot and a rural lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.

(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 Schedule 2.

(5) Notwithstanding any other provisions in this local law, a fence constructed of stone or concrete shall be a sufficient fence only if it is designed by a structural engineer where—

- (a) it is greater than 1800 mm in height; or
- (b) the Building Surveyor so requires.

## PART 3 — GENERAL

### 3.1 Fences within front setback areas

(1) A person shall not, without the written consent of the Building Surveyor, erect a free-standing fence greater than 1200 mm 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 1200 mm 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 1500 mm along the frontage to a distance of not less than 1500 mm from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.

(3) The provision of subclause (2) shall not apply to a fence—

- (a) of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare; or
- (b) that does not adjoin a footpath.

### **3.2 Gates in fences**

A person shall not erect a gate in a fence which does not—

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

### **3.3 Fences on rural lots, special residential lots and special rural lots**

A person shall not without the written consent of the Building Surveyor, erect a fence on rural lots, special rural lots or special residential lots, within 7.5 metres of a thoroughfare, of a height exceeding 1500 mm.

### **3.4 Maintenance of fences**

An owner of a lot on which a fence is erected, that abuts land under the care and control of the local government, shall maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, or unsightly.

### **3.5 General discretion of the local government**

(1) Notwithstanding clause 2.1, the local government may grant consent to the erection or repair of a fence which is not a sufficient fence, where all owners of land which adjoins the relevant boundary make an application for approval for that purpose.

(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 authorised 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**

### **4.1 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 framed, link mesh, timber, plastic coated or galvanised link mesh, corrugated fibre reinforced cement sheeting, pre-painted metal 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.

### **4.2 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 150 mm from the face of the fence and is not nearer than 2000 mm 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—

- (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.
- (6) An owner or occupier of a rural lot, special rural lot or special residential lot shall not—
- (a) place or affix barbed wire;
  - (b) allow barb 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.

## **PART 5 — ELECTRIFIED AND RAZOR WIRE FENCES**

### **5.1 Requirements for a licence**

- (1) An owner or occupier of a lot, other than a rural lot or special rural 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 3016:2002; 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 3000 mm of the boundary of the lot;
  - (b) where any razor wire used in the construction of the fence is less than 2000 mm or more than 2400 mm 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.

### **5.2 Transfer of a licence**

A licence referred to in clause 5.1 shall transfer with the land to any new occupier or owner of the lot.

### **5.3 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—

- (a) the fence no longer satisfies the requirements specified in clause 5.1(2) or 5.1(3) as the case may be; or
- (b) the licence holder breaches any condition upon which the licence has been issued.

## **PART 6 — NOTICE OF BREACH**

### **6.1 Notice of breach**

- (1) Where a breach of clause 3.4 of this local law has occurred in relation to a fence on a lot which abuts land under the care and control of the local government, the local government may give a notice in writing to the owner of that lot (“notice of breach”).
- (2) A notice of breach shall—
- (a) specify the provision of this local law which has been breached;
  - (b) specify the particulars of the breach; and
  - (c) state that the owner of the lot is required to remedy the breach within 28 days from the giving of the notice.

## **PART 7 — OFFENCES AND PENALTIES**

### **7.1 Offences and penalties**

(1) An owner 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 this local law 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.

### **7.2 Modified penalties**

(1) An offence against any provision of this local law is a prescribed offence for the purposes of section 9.16 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 \$150.

### **7.3 Form of notices**

For the purposes of this local law—

(1) the form of the infringement notice referred to in section 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*;

(2) 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*.

### **7.4 Objections and review**

When the local government makes a decision under this local law as to whether it will—

(a) grant or refuse to grant a person a licence;

(b) cancel a licence; or

(c) give a person a notice under clause 6.1,

the provisions of Division 1 of Part 9 of the *Local Government Act 1995* and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply to that decision.

[cl. 2.1(2)(a)]

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### **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 1800 mm except with respect to the front setback area for which there is no minimum height but which is subject to clause 3.1.

(B) A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting erected to manufacturer’s specifications or which 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 600 mm;

(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 manufacturers written instructions; and

(d) the height of the fence to be 1800 mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.

(C) A fence constructed of brick, stone or concrete, which satisfies the following specifications—

(a) footings of a kind appropriate to the soil type;

(b) fences to be offset a minimum of 200 mm at maximum 3000 mm centres or 225 mm x 100 mm 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 be 1800 mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.

(D) A composite fence having a minimum overall height of 1800 mm except with respect to the front set back area for which there is no minimum height but

which is subject to clause 3.1, which satisfies the following specifications for the brick construction—

- (1) (a) brick piers of minimum 345 mm x 345 mm at 1800 mm centres bonded to a minimum height base wall of 514 mm;
- (b) each pier shall be reinforced with one R10 galvanised starting rod 1500 mm high with a 250 mm horizontal leg bedded into a 500 mm x 200 mm concrete footing and set 65 mm above the base of the footing. The top of the footing shall be 1 course (85 mm) below ground level;
- (c) the minimum ultimate strength of brickwork shall be 20 mpa. 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 300 mm and checked with a standard falling weight penetrometer; and
- (e) control joints in brickwork shall be provided with double piers at a maximum of 6 metre centres; or
- (2) (a) brick piers of a minimum 345 mm x 345 mm x 2700 mm centres bonded to the base; and
- (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified.

[cl. 2.1(2)(b)]

### *Schedule 2*

#### SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT AND AN INDUSTRIAL 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 50 mm nominal bore x 3.5 mm and with footings of a 225 mm diameter x 900 mm;
  - (b) intermediate posts to be minimum 37 mm nominal bore x 3.15 mm at maximum 3.5 metre centres and with footings of a 225 mm diameter x 600 mm;
  - (c) struts to be minimum 30 mm nominal bore x 3.15 mm fitted at each gate and two at each corner post and with footings 225 mm x 600 mm;
  - (d) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15 mm wires twisted together or single 4 mm wire;
  - (e) rail-less link, chain or steel mesh is to be to a height of 2000 mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400 mm in accordance with clause 4.2(3) of this local law; and
  - (f) galvanised link mesh wire to be 2000 mm in height and constructed of 50 mm mesh 2.5 mm 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 3.6 metres and shall be constructed of 25 mm tubular framework with one horizontal and one vertical stay constructed of 20 mm piping and shall be covered with 50 mm x 2.5 mm 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 category (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 1800 mm but no greater than 2400 mm.
- (D) Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in Schedule 1.

[cl. 2.1(2)(c)]

### *Schedule 3*

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

- (A) In the case of a non-electrified fence, a sufficient fence on a rural lot, special rural lot or a special residential lot is a fence of posts and wire construction, the minimum specifications for which are—
  - (a) wire shall be high tensile wire and not less than 2.5 mm. A minimum of five 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.

- (b) posts shall be of indigenous timber or other suitable material including—
- timber impregnated with a termite and fungicidal preservative;
  - standard iron star pickets; or
  - concrete;
- (c) if timber posts are used, posts are to be cut not less than 1800 mm long x 50 mm diameter at small end if round or 125 mm x 60 mm if split or sawn. Posts to be placed at not more than 10 metre intervals, set minimum 600 mm in the ground and 1200 mm above the ground; and
- (d) strainer posts, if timber, shall be not less than 2250 mm long and 150 mm diameter at the small end (tubular steel to be 50 mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000 mm in the ground and set at all corners, gateways and fence line angles but not exceeding 200 metres apart.
- (B) An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with (1).
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Dated: 30 June 2010.

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

J. M. BONKER, Chief Executive Officer.  
MILTON EVANS JP, Mayor.