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CITY OF ROCKINGHAM

LOCAL GOVERNMENT ACT 1995

EXTRACTIVE INDUSTRIES LOCAL LAW 2000

FENCING LOCAL LAW 2000

STREET VERANDAHS LOCAL LAW 2000

**SAND DRIFT PREVENTION AND ABATEMENT
LOCAL LAW 2000**

CEMETERIES ACT 1986

CEMETERIES LOCAL LAW 2000

LOCAL GOVERNMENT ACT 1995

CITY OF ROCKINGHAM

FENCING LOCAL LAW 2000

TABLE OF CONTENTS

PART 1—PRELIMINARY

1. Citation
2. Repeal
3. Application of Local Law
4. Interpretation
5. Licence Fees and Charges

PART 2—SUFFICIENT FENCES

6. Sufficient Fences

PART 3—GENERAL

7. Fences Within Front Setback Areas
8. Fences on a Rural Lot
9. Maintenance of Fences
10. General Discretion of the Local Government

PART 4—FENCING MATERIALS

11. Fencing Materials
12. Barbed Wire and Broken Glass Fences

PART 5—ELECTRIFIED AND RAZOR WIRE FENCES

13. Requirements for a Licence
14. Transfer of a Licence
15. Cancellation of a Licence

PART 6—NOTICES OF BREACH

16. Notices of Breach

PART 7—OFFENCES

17. Offences and Penalties
18. Modified Penalties
19. Form of Notices

PART 8—OBJECTION AND APPEAL

20. Objection and Appeal

*Schedule 1***SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT***Schedule 2***SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT***Schedule 3***SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT AND A SPECIAL RURAL LOT**

LOCAL GOVERNMENT ACT 1995

CITY OF ROCKINGHAM

FENCING LOCAL LAW 2000

Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it, the Council of the City of Rockingham resolved on 27 February 2001 to make the following local law.

PART 1—PRELIMINARY**1. Citation**

This local law may be cited as the City of Rockingham Fencing Local Law 2000.

2. Repeal

The City of Rockingham Fencing Local Law published in the *Government Gazette* on 18 December 1998 is repealed.

3. Application of Local Law

This local law applies throughout the district.

4. 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 any lot that is not zoned under a town planning scheme as either a Residential, Rural or Special Rural lot.

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

- (a) an electrified fence other than a fence in respect of which a licence under Part 6 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, in the opinion of the Building Surveyor, is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

“**district**” means the district of the local government;

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

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

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

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

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

- (a) the top of the fence at any point; and
- (b) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point, or at the top of a retaining wall where a retaining wall is situated below the fence;

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

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

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

“**Residential Lot**” means a lot that may be used for residential purposes permitted under a town planning scheme.

“**retaining wall**” means any structure which prevents the lateral movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;

“**Rural Lot**” means a lot that may be used for rural activities permitted under a town planning scheme.

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

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

“**Special Rural Lot**” means a lot that may be used for special rural activities permitted under a town planning scheme.

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

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

5. Licence Fees and Charges

All licence fees and charges applicable under 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

6. Sufficient Fences

(1) Unless by agreement between the owners of adjoining properties, a person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.

(2) Subject to sub-clauses (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 is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Schedule 2; and
- (c) on either a Rural or 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 a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1; and
- (b) a Residential Lot and either a Rural or Special Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1.

PART 3—GENERAL

7. Fences Within Front Setback Areas

(1) A person shall not, without the prior written consent of the Building Surveyor, erect a free-standing fence greater than 1000mm in height, within the front set-back area of a Residential Lot within the district.

(2) The Building Surveyor may approve the erection of a fence of a height greater than 1000mm in the front setback area of a Residential Lot only if the fence on each side of the driveway into the Lot across the front boundary is to be angled into the Lot for a distance of not less than 1500mm along the frontage to a distance of not less than 1500mm from the frontage in order to provide appropriately splayed lines of vision for a motorist using the driveway for access to a thoroughfare.

(3) The provision of sub-clause (2) shall not apply to a fence of open construction that has no part of the fence obscuring the lines of vision of a motorist using the driveway for access to a thoroughfare.

8. Fences on a Rural Lot

A person shall not, without the prior written consent of the Building Surveyor, erect on a Rural Lot a fence of a height exceeding 1500mm within 7.5m of any thoroughfare.

9. Maintenance of Fences

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

(2) Where the owner of a lot to which sub-clause 9(1) applies does not occupy the lot, the occupier of the lot shall be subject to the provisions of sub-clause 9(1).

(3) All fence repairs are to be carried out in accordance with the Act.

10. General Discretion of the Local Government

(1) Notwithstanding clause 6, the local government may give its written consent to the erection or repair of a fence which does not comply with the requirements of this local law.

(2) In determining whether to grant the consent referred to in sub-clause 10(1), 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; or
- (c) the orderly and proper planning of the district.

PART 4—FENCING MATERIALS**11. Fencing Materials**

(1) A person may construct a fence on a Residential Lot or a Commercial Lot from brick, stone, concrete, wrought iron, tubular steel framed, link mesh, timber, plastic coated or galvanised link mesh, corrugated fibre reinforced cement sheeting, colour bonded metal or other 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 sub-clause (1), that approval shall be conditional on the applicant for approval painting or treating the pre-used material as directed by the Building Surveyor.

12. 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 shall not erect or affix to any fence on the 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 a Commercial Lot shall not erect or affix on any fence bounding the lot any barbed wire or other materials with spiked or jagged projections unless the wire or materials are carried on posts not less than 1950mm from the ground level.

(4) If the posts which carry the barbed wire or other materials referred to in sub-clause (3) are angled towards the outside of the lot bounded by the fence, the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.

(5) An owner or occupier of a lot shall not affix to or allow to remain as part of any internal or external fence or wall on the lot any broken glass or similar hazardous material.

(6) An owner or occupier of a Rural Lot or Special Rural Lot shall not place or affix barbed wire upon 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**13. 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 sub-clause (2); or
- (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under sub-clause (3).

(2) A licence to have and use an electrified fence shall not be issued—

- (a) in respect of a lot which is or which abuts a Residential Lot;
- (b) unless the fence complies with AS/NZS 3016:1994, (as amended); and
- (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.

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

- (a) if the fence is within 3m of the boundary of the lot;
- (b) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.

(4) An application for a licence referred to in either sub-clause (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 prior written consent of the owner.

(5) An application for a licence referred to in sub-clauses (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.

14. Transfer of a Licence

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

15. 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 13(2) or 13(3) as the case may be; or
- (b) the licence holder breaches any condition upon which the licence has been issued.

PART 6—NOTICES OF BREACH**16. Notices 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 ('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 or occupier of the lot is required to remedy the breach within 28 days from the giving of the notice.
- (3) Should an owner or occupier fail to comply with a notice of breach, the local government may by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.

PART 7—OFFENCES

17. Offences and Penalties

(1) An owner or occupier who fails to comply with a notice of breach commits an offence and is liable upon conviction to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

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

18. 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 \$100.

19. Form of Notices

For the purposes 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;

PART 8—OBJECTION AND APPEAL

20. Objection and Appeal

Where the local government exercises a discretion pursuant to this local law, an affected person has a right of objection and appeal under Part 9 of the *Local Government Act 1995*.

Clause 6(2)(a)

Schedule 1

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

Each of the following is a "sufficient fence" on a Residential Lot—

1. any type of professionally manufactured timber fence, erected in accordance with the manufacturer's specifications;
2. any corrugated fibre reinforced pressed cement sheet fence, erected in accordance with the manufacturer's specifications;
3. any type of masonry or brick fence that is constructed in accordance with relevant Australian Standards, finished plumb, true and level and appropriately jointed, cleaned and of good general appearance;
4. a steel sheet colorbond fence, erected in accordance with the manufacturer's specifications.
5. dense brushwood erected in accordance with the manufacturer's specifications.

Clause 6(2)(b)

Schedule 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT

Each of the following is a "sufficient fence" on a Commercial Lot—

1. a fence constructed of PVC coated—
 - (a) rail-less link;
 - (b) chain; or
 - (c) steel mesh;
2. the rail-less link, chain or mesh is to be to a height of 1800mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm;

3. the fence is to be supported by steel galvanised pipe posts each—
 - (a) 2700mm in length;
 - (b) having a nominal bore of 40mm and an outside diameter of 48mm;
 - (c) spaced at 4000mm centres; and
 - (d) sunk 600mm into the ground and encased in concrete having a minimum diameter of 150mm;
4. the centre and bottom steel cable wire is to be 3.15mm in diameter and double twisted;
5. terminal posts are to be braced in the line of the fence with diagonal pipe braces having a nominal bore of 50mm and an outside diameter of 60mm.

Clause 6(2)(c)

Schedule 3

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT AND A SPECIAL RURAL LOT

The following is a "sufficient fence" on a Rural Lot and a Special Rural Lot—

1. posts are to be—
 - (a) Either—
 - (i) standard iron star pickets; or
 - (ii) timber posts that are—
 - sawn, split or round;
 - treated effectively against termites and with an adequate fungicide; and
 - cut not less than 1800mm long x 100mm diameter at the small end if round or 125mm x 75mm if split or sawn;
 - (b) set 600mm in the ground and 1200mm out of the ground;
 - (c) spaced 3500mm apart;
 - (d) bored with 5 suitably spaced holes of 5mm diameter to be threaded with 5 plain high tensile steel galvanised wires each of which is to be 2.5mm in diameter.
2. Strainer posts are to be—
 - (a) either—
 - (i) cut from timber being not less than 150mm in diameter at the small end; or
 - (ii) tubular steel having a nominal bore of 80mm and an outside diameter of 88mm;
 - (b) 2300mm long;
 - (c) sunk in the ground a minimum of 1000mm and, where the strainer posts are of tubular steel, encased in concrete having a minimum diameter of 300mm;
 - (d) strutted or braced;
 - (e) wrapped with plain high tensile steel galvanised wire and strained tightly;
 - (f) set at all corners, gateways and fence line angles but not exceeding 200m apart.

Where the fence fronts a road, any barbed wire is to be affixed to the inside of the posts.

3. A rural electric fence for the retention of animals.

Dated 6 March 2001.

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

C. S. ELLIOTT, Mayor.
G. G. HOLLAND, Chief Executive Officer.
