

Local Government Act 1995

CITY OF ROCKINGHAM

FENCING LOCAL LAW 2020

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FENCING LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and the *Dividing Fences Act 1961* and under all other enabling powers, the Council of the City of Rockingham resolved on 23 February 2021 to make the following local law.

Part 1 - Preliminary

1.1 Title

This is the *City of Rockingham Fencing Local Law 2020*.

1.2 Commencement

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

1.3 Repeal

The *City of Rockingham Fencing Local Law 2000* published in the *Government Gazette* on 21 March 2001 is repealed.

1.4 Application of local law

This local law applies throughout the district.

1.5 Terms used

In this local law unless the context requires otherwise -

Act means the *Local Government Act 1995*;

adversely affect land has the meaning given to it in the *Building Act 2011*;

AS/NZS means an Australian Standard published by the Standards Association of Australia and as amended from time to time;

authorised person means a person authorised by the local government under section 9.10 of the Act to carry out functions with respect to this local law;

commercial lot means a lot where a commercial use –

- (a) is or may be permitted under a 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, or one containing barbed or razor wire, other than a fence –
 - (i) in respect of which a permit has been issued and is current; or
 - (ii) that is constructed and maintained in accordance with this local law;
- (b) a fence containing exposed broken glass, or any other potentially harmful projection or material; or
- (c) 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 the *Dividing Fences Act 1961*;

Section 5 of the *Dividing Fences Act 1961* defines “dividing fence” to mean “a fence that separates the land 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;

estate boundary fence means a fence around the external boundary of a subdivision of land to indicate the extent of that subdivision and includes any special works or construction that identifies the entrance to that land;

fence means any structure that is used or functions as a barrier, irrespective of where it is located, and includes a gate that separates the road reserve and a lot adjacent to the road reserve;

front boundary means the boundary that separates a thoroughfare and the front of a lot;

front fence means a fence in the front setback area of a lot;

front setback means the horizontal distance between the front boundary and a wall of a building, measured at a right angle to the front boundary;

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

land includes a house, building, work or structure, in or on the land;

local government means the City of Rockingham;

local planning scheme means a local planning scheme of the local government;

lot means a defined portion of land for which a separate certificate of title has been issued and includes a strata lot;

natural ground level, in relation to a development, means –

- (a) the level approved, for the purposes of the development, by the local government, under a local planning scheme; or
- (b) in any other case, the level which existed immediately before the commencement of the development (including any site works);

open fence means a fence –

- (a) that has continuous vertical gaps with a minimum gap width of 50 mm with the area of gaps being not less than one third of the area of the fence face; and
- (b) the lower portion of which may be closed up to a height of 1.2m above the natural ground level immediately in front of the fence but, where the natural ground level slopes, the height of the closed portion is to be no more than 1.2m from the base of the fence;

permit means a permit under Part 5;

person has the meaning given to it in the *Interpretation Act 1984*;

planning permit means a permit given under a local planning scheme;

public place means a place to which the public has access;

reserve means land (including a parkland or foreshore) in or adjoining the district that is –

- (a) set apart for the use and enjoyment of the public; or
- (b) acquired for public purposes and vested in or under the care, control and management of the local government;

residential lot means a lot where a residential use –

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

RMD zoned lot means single house standards for medium density housing;

rural lot means a lot where a rural use –

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

secondary frontage, in the case of a lot that has a frontage and access to more than one road, means the longer or longest of the boundaries that separates the lot from a road reserve;

special residential lot means a lot within a special residential zone under a local planning scheme;

special rural lot means a lot within a special rural zone under a local planning scheme; and

sufficient fence means a fence described in clause 2.2.

1.6 Interpretation

- (1) Nothing in this local law affects a provision in any other written law in respect of a building licence, or other approval or authorisation that might be required for a fence.
- (2) In the event of a conflict between this local law and the local planning scheme, the provisions of the local planning scheme prevail.

Under section 3.7 of the Act, this local law is inoperative to the extent that it is inconsistent with the Act or any other written law, including a local planning scheme.

Part 2 - Fencing - general

2.1 Dividing fences

- (1) Unless by agreement between the owners of adjoining properties, a person -
 - (a) must not construct or alter a dividing fence on a lot that does not satisfy the requirements of a sufficient fence;
 - (b) must maintain a dividing fence in a condition which satisfies the requirements of a sufficient fence; or
 - (c) must not alter the level of the ground adjoining the boundary so as to:
 - (i) adversely affect land on either side of the boundary; or
 - (ii) change the height of a dividing fence,unless the dividing fence is altered, reconstructed, supported or relocated so as to satisfy the requirements of a sufficient fence.
- (2) An agreement in respect of a dangerous fence is taken not to be an agreement between owners of adjoining properties for the purposes of clause 2.1(1).

2.2 Sufficient fence

- (1) Subject to subclauses (2) and (3), a sufficient fence -
 - (a) on a residential lot or a special residential lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 1.
 - (b) on a commercial lot or an industrial lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 2; and

- (c) on a rural lot or a special rural lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 3.
- (2) Where a fence is constructed on or near the boundary between the residential lot, or a special residential lot, and any of the following –
- (a) an industrial lot;
 - (b) a commercial lot;
 - (c) a rural lot; or
 - (d) a special rural lot,

a sufficient fence is a dividing fence constructed and maintained in accordance with the requirements of Schedule 1.

- (3) Where –
- (a) the zoning of a lot is changed from Rural to Residential under a local planning scheme; and
 - (b) immediately before that zoning change a dividing fence on that lot is a sufficient fence,

the requirements of Schedule 1 are not to apply to that dividing fence until a residential use becomes the predominant use for that lot.

2.3 Fences within front setback - permit requirement

- (1) A person must not, without a permit, construct a fence greater than 1.2m in height within the front setback area of a residential lot unless -
- (a) the fence is constructed and maintained in accordance with the requirements of Schedule 1; or
 - (b) the fence is a side boundary fence which uniformly slopes down from no more than 1.8m to no more than 1.2m in height over a maximum distance of 1.5m from the start of the front set back area from the building to the front of the lot.
- (2) A person must not, without a permit construct a fence greater than 0.9m in height within the front setback area of RMD zoned lot unless –
- (a) the fence is constructed and maintained in accordance with the requirements of Schedule 1; or
 - (b) the fence is a side boundary fence which uniformly sloped down from no more than 1.8m to no more than 0.9m in height over a maximum distance of 1.5m from the start of the front set back area from the building to the front of the lot.

2.4 Fences on secondary frontages

Subject to clauses 2.3 and 2.5, a person must not, without a permit, construct a fence on any secondary frontage of a residential lot unless the fence is a sufficient fence.

2.5 Sightlines at vehicle access point

Fences are to be truncated or reduced to no higher than 0.75m, within 1.5m where walls, fences and other structures adjoin vehicle access points where a driveway meets a public street and where two streets intersect.

2.6 Maintenance of fences

- (1) This clause applies to a fence that is –
 - (a) a front fence; or
 - (b) a dividing fence that separates a lot and a thoroughfare.
- (2) An owner or occupier of a lot on which a fence is constructed must maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, unsightly, or prejudicial to the amenity of the locality.
- (3) Repairs to estate boundary fence –
 - (1) An owners or occupier of a lot adjacent to an estate boundary fence must, where that fence is damaged, dilapidated or in need of repair, ensure that –
 - (a) it is repaired or replaced with the same or similar materials with which it was first constructed; and
 - (b) it is repaired or replaced with materials of the same colour as the remainder of the estate boundary fence; and
 - (c) so far as practicable the repaired or replaced section is the same as the original fence.

2.7 Prohibited fencing materials

- (1) A person must not use broken glass in the construction of a fence.
- (2) Except in accordance with a permit, a person must not use razor wire or other material with spiked or jagged projections in the construction of a fence unless the fence is a sufficient fence.

2.8 Gates in fences

A person must not construct or maintain on a lot a gate -

- (a) in a dividing fence that abuts a thoroughfare, road reserve, pedestrian access way, right of way, reserve, local government property or public property - without a permit or unless the local government has otherwise approved the access; or
- (b) in any other dividing fence - unless the gate opens into the lot or unless it slides parallel to, and on the inside of, the dividing fence.

Part 3 - Tennis court fencing

3.1 Tennis court fencing

- (1) This clause does not apply to a rural lot.
- (2) A person shall not erect a fence around or partly around a tennis court on a lot unless -
 - (a) the fence is less than 3.6m in height;
 - (b) the whole of the fence is at least 900mm from the boundary between the lot on which the tennis court is located and the adjoining lot or if it is less than 900mm, the owner of the adjoining lot has first been given the opportunity to make submissions to the local government on the location of the fence; and
 - (c) the fence is constructed of chain link fabric mesh and is 50mm x 2.5mm poly-vinyl chloride coated or galvanised, and is erected in accordance with the manufacturer's specification and any applicable Australian Standard, or if there is no applicable specification or Australian Standard, in accordance with industry best practice for that type of fence.

Part 4 - Electrified, barbed and razor wire fences

4.1 Requirement for a permit

- (1) An owner or occupier of a lot must not -
 - (a) have or use an electrified fence on that lot –
 - (i) without first obtaining a permit; and
 - (ii) except in accordance with that permit; or
 - (b) have a fence constructed wholly or partly of barbed or razor wire on that lot (unless it is a sufficient fence) –
 - (i) without first obtaining a permit; and
 - (ii) except in accordance with that permit.
- (2) Clause 4.1(1) does not apply to a fence on a rural lot or a special rural lot where the keeping of stock is permitted and the fence is necessary for stock control.
- (3) A permit to have and use an electrified fence on a lot cannot be issued -
 - (a) if the lot is, or abuts, a residential lot;
 - (b) unless the fence will comply with AS/NZS 3014:2003 Electrical installations – Electric Fences as amended from time to time; and
 - (c) unless the fence is rendered inoperable during the hours of business operations, if any, on the lot.

- (4) A permit to have on a lot a fence constructed wholly or partly of barbed or razor wire cannot be issued unless -
- (a) the fence is proposed to be within 3m of the boundary of the lot; or
 - (b) the barbed or razor wire used in the construction of the fence is to be higher than 2m but not more than 2.4m above the natural ground level.

Part 5 - Permits

5.1 Application for a permit

- (1) An owner or occupier of land may apply to the local government for a permit under this Part.
- (2) An application for a permit must –
- (a) be in the form (if any) determined by the local government;
 - (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 local government; and
 - (c) be accompanied by any fee imposed by the local government under sections 6.16 to 6.19 of the Act.

5.2 Determining an application

- (1) The local government may refuse to consider an application that does not comply with clause 5.1.
- (2) The local government may –
- (a) approve an application, subject to any conditions that it considers to be appropriate; or
 - (b) refuse an application.
- (3) In determining whether to grant the consent referred to in subclause (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.
- (4) If the local government approves an application, it is to issue its permit in writing to the applicant.

- (5) The local government may vary a condition to which a permit is subject by giving written notice to the applicant and the varied condition takes effect 7 days after that notice is given.

5.3 Revocation of a permit

The local government may revoke a permit if -

- (a) the owner (or the occupier with the owner's written consent) requests the local government to do so;
- (b) the fence to which the permit relates is being, or has been, demolished and is not proposed to be, or has not been, rebuilt for a period of at least 6 months;
- (c) the circumstances are such that the permit could not be issued under this local law; or
- (d) 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 that is the subject of the permit.

Part 6 - Objections and review

6.1 Objection and review rights

Division 1 of Part 9 of the Act applies to a decision under this local law to –

- (a) to refuse an application for a permit;
- (b) to impose or vary a condition of a permit; or
- (c) to revoke a permit.

A person affected by a decision referred to in clause 7 may have a right to object to the decision (to the council or a committee of the local government) and/or to apply to the State Administrative Tribunal for a review of the decision.

Part 7 - Enforcement

7.1 Offences and general penalty

- (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) A person who commits an offence under this local law is liable, on conviction, to a penalty not less than \$500 and 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.

7.2 Prescribed offences

- (1) An offence against a clause specified in Schedule 4 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 4.

7.3 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 Act is Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

Schedule 1 - A sufficient fence on a residential or special residential lot
[Clause 2.2(1)(a)]

1. On a residential or special residential lot, a sufficient fence is a dividing fence that -
 - (a) is constructed of:
 - (i) corrugated fibre-reinforced pressed cement sheeting;
 - (ii) timber pickets;
 - (iii) brick, stone or concrete;
 - (iv) factory coloured sheet metal post and panelled fence; or
 - (v) any combination of the materials described in paragraphs (i)-(iv); and
 - (b) in the case of a front fence -
 - (i) is 1.2m or less in height; or
 - (ii) is between 1.2m and 1.8m in height; and is an open fence above 1.2m; and
 - (iii) if the fence is a side boundary fence that uniformly slopes down from no more than 1.8m to no more than 1.2 m in height over a maximum distance of 1.5m from the start of the front set back area from the building to the front of the lot;
 - (c) in the case of a front fence for a RMD zoned lot, it is as per clause 2.3;
 - (d) in the case of any other dividing fence - is between 1.75m and 1.85m in height, and to which an extension of lattice or other permeable material as agreed between the owner or occupiers of adjoining properties parties may be added so that the total height of the fence is a maximum of 2.1m; and
 - (e) in the case of a dividing fence that is not constructed on the level of the ground adjoining the boundary, is supported by a retaining wall for which a building permit has been granted under section 20 of the *Building Act 2011*.

Schedule 2 – A sufficient fence on a commercial or industrial lot
[Clause 2.2(1)(b)]

1. This Schedule does not apply to a front fence.
2. On a commercial or industrial lot, a sufficient fence is a dividing fence that –
 - (a) is constructed of -
 - (i) at a minimum black PVC coated galvanised link mesh, and is no higher than 2.0m unless it is topped with up to 3 strands of barbed wire to a total height of no more than 2.4m;
 - (ii) fibre reinforced cement sheets; or
 - (iii) painted or galvanized steel or aluminium sheeting; or
 - (iv) colourbond; or
 - (v) timber, brick, stone or concrete; and
 - (b) is no more than 2.4m in height; and
 - (c) in the case of a dividing fence that is not constructed on the level of the ground adjoining the boundary, is supported by a retaining wall for which a building permit has been granted under section 20 of the *Building Act 2011*.

Schedule 3 – A sufficient fence on a rural or special rural lot
[Clause 2.2(1)(c)]

1. On a rural or special rural lot, a sufficient fence is -
 - (a) in all cases is at least 1.2m in height so as to prevent stock passing through and meets the following specifications:
 - (i) post and wire construction with at least five wires, with the lower wires spaced closer together than the higher wires and each wire connected to posts in all cases; or
 - (ii) post and rail construction, with at least three rails connected to posts in all cases; and
 - (b) in the case of a dividing fence that is not constructed on the level of the ground adjoining the boundary, is supported by a retaining wall for which a building permit has been granted under section 20 of the *Building Act 2011*.

Schedule 4 – Prescribed offences and modified penalties
[Clause 7.2]

Item No	Clause No	Nature of Offence	Modified Penalty (\$)
Part 2 - Fencing - general			
1	2.1(1)(a)	Constructing or altering a dividing fence which is not a sufficient fence	250
2	2.1.(1)(b)	Failing to maintain a fence in a condition to satisfy requirements of a sufficient fence	250
3	2.1(1)(c)	Altering ground level of a fence without satisfying the requirements of a sufficient fence	250
4	2.3	Constructing without a permit a fence higher than 1.2m within the front setback which is not an open fence	250
5	2.4	Constructing without permit a fence which is not a sufficient fence on a secondary frontage	250
6	2.5	Constructing a fence adjacent to an access point without a truncation	250
7	2.6(2)	Failure to maintain a fence in good condition to prevent fence becoming dangerous, dilapidated, unsightly	250
8	2.7(1)	Using broken glass in construction of a fence	250
9	2.7(2)	Using barbed or razor wire, spiked or jagged projections in fence construction without permit	250
10	2.8(a)	Constructing or maintaining a gate in a fence opening on to local government property or a thoroughfare without approval or permit	250
11	2.8(b)	Constructing or maintaining a gate in a fence not opening into the lot or by sliding parallel and on inside of fence	250
Part 3 - Tennis court fencing			
12	3.1(2)	Constructing tennis court fencing in contravention of local law	250
Part 4 – Electrified, barbed and razor wire fences			
13	4.1(1)(a)	Having and using an electrified fence without a permit	250
14	4.1(1)(b)	Having and using a barbed or razor wire fence without a permit	250
15		Other offences not specified	250

Dated 3 March 2021

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

.....
Barry Sammels, Mayor

.....
Michael Parker, Chief Executive Officer