



## FENCING LOCAL LAW 2021

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**LOCAL GOVERNMENT ACT 1995**

**DIVIDING FENCES ACT 1961**

**CITY OF WANNEROO**

**FENCING LOCAL LAW 2021**

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 Wanneroo resolved on [insert date] to make the following local law.

**PART 1 - PRELIMINARY**

**1.1 Citation and application**

This local law may be cited as the City of Wanneroo Fencing Local Law and shall apply throughout the district.

**1.2 Commencement**

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

**1.3 Repeal and transitional provisions**

The City of Wanneroo Fencing Local Law 2016, published in the *Government Gazette*, Number 137 dated 28 July 2016, is repealed.

A permit or other authorisation under a repealed local law that is in force before the commencement day is to be regarded on and after that day as a permit under this local law and may be dealt with accordingly.

**1.4 Definitions and interpretation**

(1) In this local law unless the context requires otherwise:

**Act** means the *Local Government Act 1995*;

**AS/NZS** means an Australian or Australian/New Zealand Standard (as applicable) published by Standards Australia, 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 any of the functions of an authorised person under this local law;

**Building Code** has the meaning given to it in regulation 3 of the Building Regulations 2012;

**building permit** has the meaning given to it in the *Building Act 2011*;

**commercial lot** means a lot zoned commercial, mixed use or business or an equivalent commercial zone under the local planning scheme and/or structure plan, but does not include a lot occupied by a residential building;

**dangerous**, in relation to any fence, means:

- (a) an electrified fence, or one containing barbed or razor wire, other than a fence that is constructed and maintained in accordance with this local law;

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- (b) a fence containing exposed broken glass, asbestos fibre 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 City of Wanneroo and includes any area placed under the jurisdiction of the City pursuant to any Act or Regulation;

**dividing fence** has the meaning given to it in the *Dividing Fences Act 1961* (as amended from time to time);

Section 5 of the Dividing Fences Act 1961 defines "dividing fence" to mean "a 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 the common boundary".

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

**fence** means any structure, not including a retaining wall, that is used or functions as a barrier, irrespective of where it is located, and includes any gate;

**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 situated within a general industrial or service industrial zone or an equivalent industrial zone under the local planning scheme and/or structure plan;

**land** means land in the district and includes a house, building, work or structure, in or on the land;

**local government** means the City of Wanneroo;

**local planning scheme** means a local planning scheme made by the local government under the *Planning and Development Act 2005*;

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

**occupier** where used in relation to land means the person by whom or on whose behalf the land is actually occupied or, if there is no occupier, the person entitled to possession of the land;

**open fence** means a fence:

- (a) that has continuous vertical or horizontal gaps of 50 mm or greater width comprising not less than one third of the total surface area; or

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- (b) that has continuous vertical or horizontal gaps less than 50 mm in width, comprising at least one half of the total surface area in aggregate; or
  - (c) that has a surface offering equal or lesser obstruction to view; and
  - (d) the lower portion of which may be closed up to a height of 1.2 m above the natural ground level measured from the primary street side of the fence;

**owner**, for the purposes of the definition of ‘dividing fence’, has the meaning given to it in the *Dividing Fences Act 1961*;

Section 5 of the Dividing Fences Act 1961 defines “owner” as follows:

“**owner**, in relation to land, includes every person who —

(a) jointly or severally, whether at law or in equity —

(i) is entitled to land for any estate of freehold in possession; or

(ii) is entitled to receive or is in receipt of or if the land were let to a tenant would be entitled to receive the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise;

or

(b) is the holder of a lease of land the unexpired term of which is not less than 5 years at the time —

(i) notice to fence is given by or to him pursuant to section 8;

(ii) he makes application to the court under section 11(1);

(iii) a copy of an order made pursuant to section 11(2) is given to him;

(iv) notice is given by or to him pursuant to section 15,

but does not include any trustees or other persons in whom land is vested as a public reserve, public park or for such other public purposes as may be prescribed, or a person who has the care, control and management of a public reserve, public park or land used for such other public purposes as may be prescribed;”

**owner**, for all other purposes, has the meaning given to it in the Act;

**penalty unit** has the meaning given to it in the *City of Wanneroo Penalty Units Local Law 2015*;

**person** means any natural person, company, public body, association or body of persons, corporate or unincorporated and includes an owner, occupier, licensee and permit holder (as applicable), but does not include the local government;

**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 any lot:

- (a) situated within a residential, special residential or smart growth community zone as classified by the local planning scheme and/or structure plan; or
- (b) which is or will be predominantly used for residential purposes; but

does not include a rural lot;

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**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 any lot situated within a general rural, special rural, rural resource, rural community, landscape enhancement or an equivalent rural zone as classified by the local planning scheme;

**structure plan** has the meaning given to it in the local planning scheme;

**sufficient fence** means a fence described in section 2.2;

**thoroughfare** has the meaning given to it in the Act, but does not include a private thoroughfare which is not under the management or control of the local government; and

**uniform fence** means a fence erected by a developer or subdivider in accordance with a subdivision approval which divides a residential lot from a public place such as a pedestrian access way, public open space or road reserve.

- (2) Any other expression used in this local law and not defined herein shall have the meaning given to it in the Act or the *Dividing Fences Act 1961* (as applicable).

## 1.5 Relationship with other laws

- (1) In the event of any inconsistency between the provisions of a local planning scheme and the provisions of this local law, the provisions of the local planning scheme will prevail.
- (2) Except as described below, nothing in this local law affects the need for compliance, in respect of a fence, with any relevant provisions:
- (a) of a local planning scheme; and
  - (b) that apply if a building permit is required for a fence under the *Building Act 2011* or Building Regulations 2012.
- (3) A dividing fence constructed and maintained as a sufficient fence under this local law does not require a building permit.

## PART 2 - FENCING GENERAL

### 2.1 Dividing fences

- (1) Unless by agreement between the owners of adjoining lots, a person must:
- (a) not construct or alter a dividing fence on a lot so that it does not satisfy the requirements for a sufficient fence as set out in this local law;
  - (b) not attach anything to a dividing fence;
  - (c) maintain a dividing fence in a condition which satisfies the requirements of a sufficient fence; or
  - (d) not alter the level of the ground adjoining the boundary so as to change the height of a dividing fence unless the dividing fence is altered, reconstructed 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 lots for the purposes of section 2.1(1) of this local law.

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- (3) Without limiting section 1.5, an agreement between the owners of adjoining lots does not negate the need to obtain approval under any other written law.

## **2.2 Sufficient fence**

- (1) Subject to subsections (2) and (3), a sufficient fence:

- (a) on a 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 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 a residential lot and any of the following:

- (a) an industrial lot;
- (b) a commercial lot; or
- (c) a 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 will not apply to that dividing fence until a residential use becomes the predominant use for that lot.

- (4) A dividing fence or any fence lawfully erected prior to this local law coming into operation constitutes a sufficient fence.

## **2.3 Fencing within the front setback area**

- (1) On a residential lot, a front fence shall:

- (a) comply with State Planning Policy 7.3 – Residential Design Codes, or any other provisions made under a local planning scheme that prevail over the Residential Design Codes; and
- (b) be constructed of face finished brick, concrete, stone or timber palings, or a combination of the aforementioned materials or similar (but excluding fibre cement sheeting or sheet metal), that complement the dwelling and do not detract from the streetscape.

- (2) On an industrial lot, a fence erected within the front setback area shall be constructed and maintained as an open fence and not exceed a height of 2.4m.

- (3) On a rural lot, a front fence shall be :

- (a) not greater than 1.2m in height; or

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- (b) if greater than 1.2m in height, constructed and maintained as an open fence and must not exceed 1.8m in height.

#### **2.4 Sightlines at vehicle access point**

A fence adjacent to any vehicle access point, or where two street intersect, must be truncated with the minimum dimension of the truncation being 1.5m or the fence reduced in height to no more than 0.75m.

#### **2.5 Maintenance of fences**

- (1) This section applies to a fence that is:
  - (a) a front fence; or
  - (b) a 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) An owner or occupier of a lot adjacent to a uniform 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) so as far as practicable the repaired or replaced section is the same, including of same height, as the original fence.

#### **2.6 Prohibited fencing materials**

In constructing or maintaining a fence a person must not use:

- (1) except where specifically allowed by this local law, broken glass or any other potentially harmful projection or material;
- (2) asbestos fibre;
- (3) any material that is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause; or
- (4) pre-used materials, unless they are painted or treated to the satisfaction of the local government.

#### **2.7 Gates in fences**

A person must not construct or maintain on a lot a gate in a fence, unless:

- (1) the gate opens into the subject lot; or
- (2) the gate opens by sliding parallel on the inside of the fence, which it forms part of, when closed; and
- (3) where the gate provides vehicular access, approval for the vehicular access has been granted by the local government.

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## **PART 3 - BARBED AND RAZOR WIRE FENCES**

### **3.1 Barbed and razor wire fences**

- (1) On a residential lot or any other lot abutting such a lot, a person shall not erect or affix to any fence any barbed wire, razor wire or other material with spiked or jagged projections.
- (2) On an industrial lot or a commercial lot, a person shall not erect or affix to any fence bounding that lot any barbed wire, razor wire or other materials with spiked or jagged projections unless the wire or materials are not less than 2.0m from ground level.
- (3) If the posts which carry the barbed wire, razor wire or other materials referred to in subsection (2) 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 material do not encroach on adjoining land.
- (4) On a rural lot, a person 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 4 - ELECTRIFIED FENCES**

### **4.1 Electrified fences**

- (1) On a residential lot or commercial lot or any other lot abutting such a lot, a person shall not erect or affix an electrified fence.
- (2) On a rural lot or industrial lot, an electrified fence shall:
  - (a) comply with AS/NZS 3016:2002 and/or AS/NZS 3014:2003 (as applicable), as amended from time to time;
  - (b) comply with any requirements of Western Power; and
  - (c) be inoperable during the hours of business, if any.

## **PART 5 - Enforcement**

### **5.1 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 daily penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

### **5.2 Prescribed offences**

- (1) An offence against a section of this local law specified in Schedule 4 is a prescribed offence for the purposes of section 9.16 of the Act.
- (2) The number of modified penalty units for a prescribed offence is that specified in the fourth column of Schedule 4.



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- (3) If this local law expresses a modified penalty as a number of penalty units, the monetary value of the modified penalty is the number of dollars obtained by multiplying the value of the penalty unit by the number of penalty units.

### **5.3 Form of infringement notices**

For the purposes of this local law:

- (1) the form of the infringement notice referred to in section 9.16 of the Act is Form 2 in Schedule 1 of the Local Government (Functions and General) Regulations 1996; and
- (2) 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.

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**Schedule 1**  
(section 2.2(1)(a))

**A SUFFICIENT FENCE ON A RESIDENTIAL LOT BEHIND THE FRONT SETBACK**

1. This Schedule does not apply to a uniform fence or a front fence.
2. Refer to section 2.3 of this local law for fences within the front setback area.
3. On a residential lot, a sufficient fence is a dividing fence that:
  - (a) is constructed of:
    - (i) corrugated fibre-reinforced pressed cement sheeting;
    - (ii) timber palings;
    - (iii) masonry (including brick, stone or concrete);
    - (iv) factory coloured sheet metal post and panelled fence;
    - (v) PVC panel (eg. Duralock); or
    - (vi) any combination of the materials described in paragraphs (i)-(v); and
  - (b) is between 1.75m and 1.85m in height; and
  - (c) where constructed of masonry, is in accordance with AS/NZS for masonry construction that has been adopted by the Building Code at the time of construction.

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**Schedule 2**  
(section 2.2(1)(b))

**A SUFFICIENT FENCE ON A COMMERCIAL LOT OR INDUSTRIAL LOT**

1. This Schedule does not apply to a uniform fence or a front fence.
2. Refer to section 2.3 of this local law for fences within the front setback area.
3. On a commercial lot or industrial lot, a sufficient fence is a dividing fence that:
  - (a) is constructed of:
    - (i) link mesh, chain mesh or steel mesh and is no higher than 2.0m, unless it is topped with up to three strands of barbed wire to a total height of no more than 2.4m;.
    - (ii) fibre reinforced cement sheets;
    - (iii) painted or galvanized steel or aluminium sheeting; or
    - (iv) timber or masonry (including brick, stone or concrete); and
  - (b) is no more than 2.4m in height; and
  - (c) where constructed of masonry, is in accordance with AS/NZS for masonry construction that has been adopted by the Building Code at the time of construction.

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**Schedule 3**  
(section 2.2(1)(c))

**A SUFFICIENT FENCE ON A RURAL LOT**

1. This Schedule does not apply to a uniform fence or a front fence.
  2. On a rural lot, a sufficient fence is a dividing fence that:
    - (a) is at least 1.2m in height; and
    - (b) is constructed of posts and wire.
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**Schedule 4**  
(section 6.2)

**PRESCRIBED OFFENCES AND MODIFIED PENALTIES**

Item No	Clause No	Nature of Offence	Penalty Unit
<b>Part 2 - Fencing - general</b>			
1	2.1(1)(a)	Constructing or altering a dividing fence which is not a sufficient fence	25
2	2.1(1)(b)	Attaching anything to a dividing fence	25
3	2.1(1)(c)	Failing to maintain a fence in a condition to satisfy requirements of a sufficient fence	25
4	2.1(1)(d)	Altering ground level of a fence without satisfying the requirements of a sufficient fence	25
5	2.3 (1)(a)	Constructing a front fence that does not comply with the Residential Design Codes or any local planning scheme provision	25
6	2.3(1)(b)	Constructing a front fence of a material that does not complement the dwelling or detracts from the streetscape	25
7	2.3(2)	Constructing a fence on an industrial lot that is not an open fence or is in excess of 2.4m	25
8	2.3(3)	Constructing a fence on a rural lot that is greater than 1.2m in height or, if greater than 1.2m in height, that is not an open fence or is in excess of 1.8m	25
9	2.4	Constructing a fence adjacent to a vehicle access point without a truncation	25
10	2.5(2)	Failure to maintain a fence in good condition to prevent fence becoming dangerous, dilapidated, unsightly	25
11	2.6	Using a prohibited material in the construction or maintenance of a fence	25
12	2.7	Constructing or maintaining a gate in a fence not opening into the lot or by sliding parallel and on the inside of the fence	25
<b>Part 3 –Barbed and razor wire fences</b>			
13	3.1(1)	Using barbed or razor wire, spiked or jagged projections in a fence on a residential lot, special residential lot or any other lot abutting such a lot.	25
14	3.1(2)	Having and using a barbed or razor wire fence on a commercial or industrial lot at a height lower than 2m	25
15	3.1(3)	Constructing a fence with barbed wire that encroaches into adjoining land	25
16	3.1(4)	Placing or affixing barbed wire on the side of a fence on a rural lot that faces a thoroughfare or other public place	25
<b>Part 4 – Electrified fences</b>			
17	<b>Error! Reference source not found.</b>	Having and using an electrified fence on a residential lot, commercial lot or any other lot abutting such a lot	25
18	4.1(2)(a)	Having and using an electric fence on a rural lot or industrial lot that is non-compliant with an Australian Standard	25
19	4.1(2)(b)	Having or using an electric fence on a rural lot or industrial lot that does not comply with the requirements of Western Power	25
20	4.1(2)(c)	Operating an electric fence on a rural lot or industrial lot during business hours	25
21		Other offences not specified	25

**Note:** Penalty Units are prescribed in the City of Wanneroo Penalty Units Local Law 2015. At 14 November 2015 when the local law came into effect one penalty unit was \$10.00.